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Government of West Bengal

Legislative Department

The West Bengal Code

Second edition

In Eight Volumes

Volume III

Bengal Acts, 1890 to 1919

(As modified up to the 30th November, 1963.)

Superintendent, Government Printing
West Bengal Government Press, Alipore, West Bengal
1964

Price—Rs. 11.50 nP.

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PREFACE

This, the third volume of the second Edition of the West Bengal Code, contains such of the Bengal Acts of the years 1890 to 1919 as are now in force in the State of West Bengal or in any part thereof. The system followed in editing the volume and other details in respect of this publication are described in the preface to volume 1 of this Code.

The Acts included in this volume are printed generally as modified upto the 30th November, 1963.

Calcutta,
The 30th November, 1963.

S. Sen Gupta,
Secretary to the Government of West Bengal,
Legislative Department.

CHRONOLOGICAL TABLE OF ENACTMENTS 1890-1919

Year	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1890	I	... <i>The Calcutta and Suburban Police (Superannuation Fund) Act, 1890.</i>	...	<i>Repealed by Ben. Act VI of 1906.</i>
1890	II	... <i>The Bengal Vaccination (Amendment) Act, 1890.</i>	...	<i>Not printed. This is a spent Act.</i>
1890	III	... <i>The Calcutta Port Act, 1890</i> ...	1	
1891	I	... <i>Public Demands Recovery (Amending Ben. Act VII of 1880).</i>	...	<i>Repealed by Ben. Act I of 1896.</i>
1891	II	... <i>The Calcutta Hackney-carriage Act, 1891.</i>	...	<i>Repealed (in Bengal) by Ben. Act I of 1919.</i> <i>Repealed (in B. & O.) by B. & O. Act VII of 1922.</i>
1892	I	... <i>The Bengal Village-chaukidari (Amendment) Act, 1892.</i>	...	<i>Repealed (in Bengal) by Ben. Act XVI of 1946.</i> <i>Repealed (in B. & O.), (in areas notified), by B. & O. Act III of 1922.</i>
1893	I	... <i>The Licensed Warehouse and Fire-Brigade Act, 1893.</i>	...	<i>Repealed by West Bengal Act XVIII of 1950.</i>
1894	I	... <i>The Licensed Warehouse and Fire-Brigade (Amendment) Act, 1894.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1894	II	... <i>The Calcutta Port (Amendment) Act, 1894.</i>	...	<i>Amending Act. Not printed.</i>
1894	III	... <i>The Calcutta Tramways Act, 1894</i>	81	
1894	IV	... <i>The Bengal Municipal (Amendment) Act, 1894.</i>	...	<i>Repealed (in Bengal) by Ben. Act XV of 1932.</i> <i>Repealed (in B. & O.) by B. & O. Act VII of 1922.</i>
1894	V	... <i>Tenancy (Amending Act VIII of 1885)</i>	...	<i>Repealed by Ben. Act III of 1898.</i>
1894	VI	... <i>Municipalities (Amending Ben. Act IV of 1894).</i>	...	<i>Repealed by Act I of 1903.</i>
1895	I	... <i>The Public Demands Recovery Act, 1895.</i>	...	<i>Repealed (in Bengal Presidency) by Ben. Act III of 1913.</i> <i>Repealed (in B. & O.) by B. & O. Act IV of 1914.</i>
1895	II	... <i>The Calcutta and Suburban Police (Amendment) Act, 1895.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1895	III	... <i>The Land Records Maintenance Act, 1895.</i>	88	

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1895	IV	... The Calcutta Port (Amendment No. 1) Act, 1895.	...	Amending Act. Not printed.
1895	V	... <i>The Lepers Act, 1895</i>	...	<i>Repealed by Act III of 1898, sec. 19, and notification No. 228, dated the 18th May, 1901, in the Calcutta Gazette, 1901, Pt. I, page 645.</i>
1895	VI	... The Calcutta Port (Amendment No. 2) Act, 1895.	...	Amending Act. Not printed.
1895	VII	... <i>The Bhutan Duars Repealing Act, 1895.</i>	...	<i>Repealed by Act I of 1903.</i>
1895	VIII	... <i>The Bengal Sanitary Drainage Act, 1895.</i>	...	<i>Repealed by Ben. Act VI of 1920.</i>
1895	IX	... <i>The Calcutta Electric Lighting Act, 1895.</i>	...	<i>Repealed by Act III of 1903.</i>
1896	I	... The Protection of Muhammadan Pilgrims Act, 1896.	97	
1896	II	... <i>The Bengal Municipal (Amendment) Act, 1896.</i>	...	<i>Repealed (in Bengal) by Ben. Act XV of 1932.</i> <i>Repealed (in B. & O.) by B. & O. Act VII of 1922.</i>
1897	I	... <i>The Bengal Public Demands Recovery (Amendment) Act, 1897.</i>	...	<i>Repealed (in Bengal Presidency) by Ben. Act III of 1913.</i> <i>Repealed (in B. & O.) by B. & O. Act IV of 1914.</i>
1897	II	... The Murray Trust Act, 1897	...	Private Act. Not printed.
1897	III	... <i>The Bengal Rain-gambling Act, 1897</i>	...	<i>Repealed by Ben. Act IV of 1913.</i>
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1899	II	... <i>The Bengal Civil Court Amins Act, 1899.</i>	...	<i>Not printed. This is a spent Act.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1899	III	<i>Repealed by Ben. Act III of 1923.</i>
1900	I	<i>Repealed by Ben. Act XV of 1922.</i>
1900	II	<i>Repealed by Act I of 1903.</i>
1900	III	<i>Repealed by Ben. Act I of 1920.</i>
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		<i>The Calcutta Tramways (Electric Traction) Act, 1900.</i>		
1902	I	<i>Repealed by Act III of 1903.</i>
		<i>The Howrah Bridge Electric Lighting Act, 1902.</i>		
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		<i>The Bengal Drainage (Amendment) Act, 1902.</i>		
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		<i>The Bengal Tenancy (Validation and Amendment) Act, 1903.</i>		
1903	II	<i>Repealed (in former Province of Bengal) by Ben. Act V of 1909. Repealed (in Eastern Bengal and Assam) by E.B. and A. Act I of 1910.</i>
		<i>The Bengal Excise and Licensing (Amendment) Act, 1903.</i>		
1903	III	<i>Repealed by Act VIII of 1914.</i>
		<i>The Bengal Motor-car and Cycle Act, 1903.</i>		
1903	IV	<i>Repealed by Ben. Act V of 1914.</i>
		<i>The Chittagong Port Commissioners (Amendment) Act, 1903.</i>		
1903	V	<i>Repealed by Ben. Act VI of 1908.</i>
		<i>The Chota Nagpur Tenancy (Amendment) Act, 1903.</i>		
1904	I	<i>Repealed by Ben. Act XVI of 1946.</i>
		<i>The Bengal Tramways (Amendment) Act, 1904.</i>		
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1905	IV	<i>Amending Act. Not printed.</i>
		<i>The Calcutta Port (Amendment) Act, 1905.</i>		
1905	V	<i>Repealed by Ben. Act VI of 1908.</i>
		<i>The Chota Nagpur Tenancy (Amendment) Act, 1905.</i>		
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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1906	I	<i>The Bengal Court of Wards (Amendment) Act, 1906.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1906	II	<i>The Bengal Land Registration (Amendment) Act, 1906.</i>	...	<i>Repealed by Ben. Act I of 1914.</i>
1906	III	<i>The Bengal Disorderly Houses Act, 1906.</i>	...	<i>Repealed by Ben. Act I of 1914.</i>
1906	IV	<i>The Sambalpur Civil Courts Act, 1906.</i>	...	No application to West Bengal. Not printed.
1907	I	<i>The Bengal Tenancy (Amendment) Act, 1907.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1907	II	<i>The Calcutta Port (Amendment) Act, 1907.</i>	...	Amending Act. Not printed.
1907	III	<i>The Calcutta and Suburban Police (Amendment) Act, 1907.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1908	I	<i>The Calcutta Port (Amendment) Act, 1908.</i>	...	Amending Act. Not printed.
1908	II	<i>The Sambalpur (Evidence) Act, 1908</i>	...	No application to West Bengal. Not printed.
1908	III	<i>The Puri Lodging-house (Amendment) Act, 1908.</i>	...	<i>Repealed by Ben. XVI of 1946.</i>
1908	IV	<i>The Bengal Repealing Act, 1908.</i>	...	<i>Ditto.</i>
1908	V	<i>The Bengal Local Self-Government (Amendment) Act, 1908.</i>	...	<i>Ditto.</i>
1908	VI	<i>The Chota Nagpur Tenancy Act, 1908.</i>	...	Not printed.
1909	I	<i>The Indian Lunatic Asylums (Amendment) Act, 1909.</i>	...	<i>Repealed by Ben. Act I of 1914.</i>
1909	II	<i>The Bengal Court of Wards (Amendment) Act, 1909.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>
1909	III	<i>The Chota Nagpur Encumbered Estates (Amendment) Act, 1909.</i>	...	No application to West Bengal. Not printed.
1909	IV	<i>The Sambalpur Delegation Act, 1909.</i>	...	<i>Ditto.</i>
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1910	II	<i>The Bengal Municipal (Amendment and Validation) Act, 1910.</i>	...	<i>Repealed (in Bengal) by Ben. Act XV of 1932.</i> <i>Repealed (in B. & O.) by B. & O. Act VII of 1932.</i>
1910	III	<i>The Calcutta and Suburban Police (Amendment) Act, 1910.</i>	...	<i>Repealed by Ben. Act XVI of 1946.</i>

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1911	I	... <i>The Sambalpur Repealing and Amending (Rates and Cesses) Act, 1911.</i>	...	No application to West Bengal. Not printed.
1911	II	... <i>The Bengal Vaccination (Amendment) Act, 1911.</i>	...	<i>Not printed. This is an amending Act and should be repealed.</i>
1911	III	... <i>The Bengal Local Government Act, 1911.</i>	...	<i>Repealed by Ben. Act I of 1939.</i>
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1914	IV	... <i>The Calcutta Municipal (Loans) Act, 1914.</i>	...	<i>Repealed by Ben. Act III of 1923.</i>
1914	V	... <i>The Chittagong Port Act, 1914</i>	...	No application to West Bengal. Not printed.
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1915	I	... <i>The Calcutta Port (Amendment) Act, 1915.</i>	...	Ditto.
1915	II	... <i>The Bengal Steam-boilers and Prime-movers (Amendment) Act, 1915.</i>	...	<i>Repealed by Act V of 1923.</i>

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1916	I	Repealed by Ben. Ac XVI of 1946.
1917	I	Repealed by Ben. Ac III of 1923.
1918	I	Repealed by Ben. Ac XVI of 1946.
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1918	V	Amending Act. No printed.
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1919	III	Repealed by Ben. Ac XVI of 1946.
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1919	V	...	549	
1919	VI	...	603	
1919	VII	Repealed by Ben. Ac XVI of 1946.

The West Bengal Code

Volume III

BENGAL ACTS OF 1890 TO 1919, IN FORCE IN WEST BENGAL.

Bengal Act III of 1890

(THE CALCUTTA PORT ACT, 1890.)

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(2) Power of Central Government to cancel scale of tolls, etc.
- 108. Power of Commissioners to charge additional general or differential tolls, etc., on all or any portion or description of goods to provide for payment of debt.
- 109. Mode of levy and recovery of additional general or differential tolls, etc.
- 109A. Power of Commissioners to remit tolls, etc.
- 110. (*Repealed.*)
- 111. Recovery of tolls in arrear.
- 112. Responsibility of Commissioners for loss, destruction or deterioration of animals or goods.
- 113. (1) Commissioners to take charge of goods landed by them.
(2) Goods not stored in licensed warehouses to remain at risk and expense of owner if not removed within five days.
- 114. (1) Commissioners to give notice to consignee, etc., of cessation of liability.
(2) Also to publish notice of expiry of such liability.
- 115. Liability of consignee or owner with respect to goods stored in public warehouses.
- 116. (1) Lien for freight preserved after landing of goods, if notice of lien be given.
(2) Goods to be retained in warehouses and sheds until discharge of lien.
- 117. Commissioners may permit goods to be removed without regard to lien.
- 118. Power of Commissioners to sell goods by public auction.
- 119. (1) Notice to be given before sale of goods.
(2) Notice to be given to owner by letter if address be known.
- 119A. Disposal of goods not removed from the premises of the Commissioners within time limited.
- 120. (1) Application of proceeds of sale.
(2) Surplus of sale-proceeds to whom to be paid.
- 121. Power of Collector of Customs to distrain vessels for non-payment of tolls.
- 122. Port clearance not to be granted until tolls, etc., are paid.
- 122A. Warehouses may be made bonded warehouses, and warrants may be granted.
- 122B. Commissioner may give security for duty on bonded goods.
- 122C. Commissioners may store goods in bonded warehouses.
- 122D. Alternative remedy by suit.

CHAPTER V.**OF THE POWERS OF THE COMMISSIONERS AS CONSERVATORS OF THE PORT.**

- 123. (1) Moneys received by the Commissioners as Conservator of Port or as body appointed under section 36 of the Indian Ports Act, 1908.
(2) Powers, etc., of the Commissioners as Conservator of Port or as body appointed under section 36 of the Indian Ports Act, 1908.
- 124. (*Repealed.*)

of 1890.]

CHAPTER VI.

OF WRECKS.

SECTION.

135. Commissioners to exercise functions of Receiver of Wreck.

CHAPTER VII.

OF BYE-LAWS.

126. Power to make, alter or repeal bye-laws.
127. Penalty for infringement of bye-laws.
128. Bye-laws and tables of tolls, etc., to be printed and hung up at docks, etc.

CHAPTER VIII.

OF THE CONSTITUTION AND CONTROL OF PORT POLICE FORCE.

129. Constitution of Port Police Force.
130. Port Police Force to be under control of Commissioner of Police.
131. Superintendent of Port Police to act under control of Commissioner of Police.
132. Superintendent of Port Police to submit daily reports of offences.

CHAPTER IX.

OF THE PORT POLICE BUDGET.

133. Commissioner of Police to submit budget or estimate of Port Police Force to Commissioners.
134. (1) Budget when to be laid before Commissioner.
(2) Budget to be submitted to Central Government.
(3) Amount of estimates passed to be paid to officer appointed by Central Government.

CHAPTER X.

MISCELLANEOUS.

- 134A. Supply of reports, returns, etc., to the Central Government.
134B. Annual administration report of the Port.
135. Indemnity to Commissioners against default of employees, etc.
136. Persons employed under this Act to be public servants for certain purposes.
136A. Power to evict certain persons from the premises belonging to the Commissioners.
137. Penalty for committing certain nuisances on docks, etc.
138. Jurisdiction in case of offences committed within Calcutta.
139. Jurisdiction in case of offences committed out of Calcutta.
140. Police officers to give immediate information of certain offences.
141. Police officer may arrest persons committing nuisances.
142. Time allowed for institution of suits.
143. Application of certain provisions of the Act to aircraft.

First Schedule. Repeal of Acts of the Lieutenant-Governor of Bengal in Council,

Second Schedule (*Original*). (*Repealed*.)

Second Schedule (*New*). Form of Receipt for Goods.

Bengal Act III of 1890

(The Calcutta Port Act, 1890.)¹

				Ben. Act II of 1894.
				Ben. Act VI of 1895.
				Ben. Act II of 1898.
				Ben. Act IV of 1905.
				Ben. Act I of 1908.
				Ben. Act I of 1910.
				Ben. Act I of 1912.
				Ben. Act I of 1915.
				Ben. Act VII of 1920.
				Ben. Act VI of 1923.
AMENDED	...	...	...	Ben. Act I of 1926.
				Ben. Act VI of 1926.
				Ben. Act III of 1933.
				Ben. Act IV of 1934.
				West Ben. Act XXV
				of 1954.
				Act I of 1903.
				Act XXV of 1942.
				Act XXXVI of 1948.
				Act XXXV of 1951.
				Act XLI of 1952.
				Act XIII of 1958.
				Act LVIII of 1960.
REPEALED IN PART AND AMENDED	..			Ben. Act IV of 1895.
				Ben. Act II of 1907.
				Ben. Act V of 1915.
				(a) The Government of
				India (Adaptation of
				Indian Laws) Order,
				1937.
ADAPTED	...	...	...	(b) The Indian Indepen-
				dence (Adaptation of
				Bengal and Punjab
				Acts) Order, 1948.
				(c) The Adaptation of
				Law Order, 1950.

(28th May, 1890.)

An Act to consolidate and amend the Law relating to the Port of Calcutta and to the appointment of the Commissioners for the said Port.

WHEREAS it is expedient to consolidate and amend the law relating to the Port of Calcutta and to the appointment of Commissioners for the said Port : It is hereby enacted as follows :—

Preamble.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1889, Part IV, page 26, and for Proceedings in Council, see *ibid*, 1889, Supplement, pages 661, 714, 960 ; *ibid*, 1890, Supplement, pages 3, 45, 172, 200, 452, 504 and 668.

LOCAL EXTENT.—This Act extends only to the Port of Calcutta—see the title and preamble.

(Chapter I.—Preliminary.—Sections 1—3.)

CHAPTER I.

PRELIMINARY

Title and
commence-
ment.

1. (1) This Act may be called the Calcutta Port Act, 1890.

(2) It shall come into force on such date¹ as the ²[Central Government] may direct, not being more than three months after the date on which it may be published in the ³[Official Gazette] with the assent of the ⁴[President].

Enact-
ments
repealed.

2. (1) On the commencement of this Act, the enactments specified in the First Schedule shall be repealed to the extent mentioned in the third column thereof.

(2) But this repeal shall not revive any office, authority or thing abolished by any such enactments, or affect the validity of anything done or suffered, or any right, title, obligation or liability accrued, before the commencement of this Act.

(3) All rules and bye-laws prescribed, appointments made, powers conferred and notifications published under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred and published under this Act.

(4) Any enactment or document referring to any enactments hereby repealed shall be construed to refer to this Act, or the corresponding portion thereof.

(5) Nothing herein contained shall deprive any person of any right of property, or other private right, except as hereinafter expressly provided.

Defini-
tions.

3. In this Act, unless there be something repugnant in the subject or context—

"the
Commis-
sioners."
"Commis-
sioner."

(1) "the Commissioners" shall mean "the Commissioners ⁵[for the Port] of Calcutta" hereinafter incorporated ;

(2) "Commissioner" shall mean a member of the said Corporation ;

"dock."

(3) "dock" shall include all basins, cuts, quays, wharves, warehouses, tramways, and other works and things appertaining to any dock ;

"goods."

(4) "goods" shall include wares and merchandise of every description ;

¹The 1st June, 1890.—See Notification No. 143, dated the 28th May, 1890 in the *Calcutta Gazette* of 1890, Part I, page 509.

²These words were substituted for the words "Local Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1), *ibid.*

⁴This word was substituted for the word "Governor-General" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "of the Port" by sec. 60 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter I.—Preliminary.—Section 3A.)

- (5) "land" shall include the bed of the river below high water-marks ; "land."
- ¹[(6) "master" when used in relation to any vessel or to any aircraft making use of the port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, berthing master, dock master or assistant harbour master of the port ;] "master."
- (7) "pier" shall include any stage, stairs, landing-place, jetty, floating-barge or pontoon, and any bridges or other works connected therewith ; "pier."
- (8) "port" shall mean the Port of Calcutta ; "port."
- ²[(8a) "Port approaches" shall mean those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act, 1908 is in force ;] "Port approaches."
- ²(8b) "public securities" shall mean— "Public securities."
- (a) promissory notes, debentures, stock or other securities of the Central Government or of any State Government ;
- (b) debentures or other securities for money issued by, or on behalf of, any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India, and includes the debentures or other securities issued by the Commissioners under this Act ;]
- ³[(9) "vessel" includes anything made for the conveyance mainly by water of human beings or of property ;]
- (10) "wharf" shall include any bank of the river which may be improved to facilitate the loading or unloading of goods, and any foreshore used for the same, and any wall enclosing or adjoining such bank or foreshore. "wharf."

⁴3A. (1) Any requirement in this Act that a notification, order, rule or bye-law issued or made by the Commissioners or by the Central Government shall be published in the *Official Gazette*, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or bye-law shall—

- (a) where it is issued or made by the Commissioners, be published in the *Official Gazette* of the State, and

Requirements as to publication of notifications, orders, etc., in the *Official Gazette*.

¹Clause (6) was substituted for the original clause (6) by sec. 60 (b) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²Clauses (8a) and (8b) were inserted by sec. 60 (c), *ibid*.

³Clause (9) was substituted for the original clause (9) by sec. 60 (d), *ibid*.

⁴Section 3A was inserted by sec. 61, *ibid*.

(Chapter I.—Preliminary.—Chapter II.—Of the Constitution of the Port Commission.—Sections 4, 5.)

(b) where it is issued or made by the Central Government, be published in the *Gazette of India*.

(2) Any notification, order, rule or bye-law issued or made by the Central Government shall, for general information, be also republished in the *Official Gazette* of the State.

CHAPTER II.

OF THE CONSTITUTION OF THE PORT COMMISSION.

Provisions of Act to be carried out by body of Commissioners.

4. The duties of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a body of Commissioners to be called "the Commissioners for the Port of Calcutta"; and such body of Commissioners shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.

Constitution of Commissioners.

¹5. There shall be twenty-four Commissioners, that is to say :—

- (i) the Chairman, *ex-officio* ;
- (ii) the Deputy Chairman, *ex-officio* ;
- (iii) the Collector of Customs, Calcutta, *ex-officio* ;
- (iv) the Chief Executive Officer of the Municipal Corporation for the City of Calcutta, *ex-officio* ;
- ²(v) the General Manager, Eastern Railway, *ex-officio* ;
- ²(vi) the Director of the Railway Board at Calcutta, *ex-officio* ;
- (vii) one representative of the Mercantile Marine Department chosen by the Central Government ;
- (viii) one representative of the Defence Services chosen by the Central Government ;
- (ix) one representative of the ³[State] Government chosen by the ³[State] Government ;
- (x) two representatives of labour chosen by the Central Government after consultation with the registered trade unions, if any, composed of persons employed in the Port ; and
- (xi) thirteen elected Commissioners.

¹Section 5 was substituted for the previous section by sec. 2 and the Schedule of the Bombay, Calcutta and Madras Port Trusts (Constitution) (Amendment) Act, 1948 (XXXVI of 1948), sec. 2 and the Schedule.

²These clauses (v) and (vi) were substituted for the original clauses by sec. 2 of the Calcutta Port (Amendment) Act, 1952 (XLI of 1952).

³The word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

of 1890.]

(Chapter II.—Of the Constitution of the Port Commission.—
Sections 6—10.)

6. ¹[(1) Of the thirteen elected Commissioners one shall be elected by the Municipal Corporation of the City of Calcutta, one shall be elected by the Howrah Municipality and the remaining by such State² or local bodies representing commercial interests as the Central Government may, from time to time, by notification in the *Official Gazette*, specify, and such notification may also specify the number of Commissioners that each of such bodies may elect.]

Election of Commissioners.

(2) The election shall be made in such manner as may be determined by the electing bodies, subject to the approval of the ³[Central Government]; and the name of every person so elected shall be published in the ⁴[*Official Gazette*].

⁵[(3) All the Commissioners other than those who are *ex-officio* Commissioners or elected Commissioners shall be appointed either by name or by virtue of office by the Central Government by notification in the *Official Gazette*].

7. In the event of default being made by the electing bodies aforesaid in electing any Commissioner under the last preceding section within the period hereinafter prescribed in this behalf, it shall be lawful for the ³[Central Government] to appoint a person ⁶[by notification in the *Official Gazette*]; and the person so appointed shall ⁶[for all the purposes of this Act] be deemed to be a Commissioner as if he had been elected.

In default of election, Central Government to appoint.

⁷[8. The Chairman and Deputy Chairman shall be appointed by the Central Government by notification in the *Official Gazette* and shall hold office during the pleasure of the Central Government.]

Appointment of Chairman and Deputy Chairman.

9. [Term of office of Chairman and Deputy Chairman.—
Rep by sec. 64 of the Port Trusts and Ports (Amendment) Act, 1951) XXXV of 1951).]

⁸10. (1) Subject to the provisions hereinafter contained, every person appointed by name or elected to be a Commissioner shall hold the office to which he shall be appointed or elected for a term of two years commencing on the first day of April next following his appointment or election, as the case may be, but may at the expiration of such term, be re-appointed or re-elected.

Term of Office of Commissioners.

¹Sub-section (1) was substituted for the original sub-section by sec. 2 and the Schedule of the Bombay, Calcutta and Madras Port Trusts (Constitution) (Amendment) Act, 1948 (XXXVI of 1948).

²See foot-note 3 on page 12, *ante*.

³See foot-note 2 on page 10, *ante*.

⁴See foot-note 3 on page 10 *ante*.

⁵Sub-section (3) was inserted by sec. 62 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶These words within square brackets were inserted by sec. 4 of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

⁷Section 8 was substituted for the former section 8 by sec. 63 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁸Section 10 was substituted for the former section by sec 65, *ibid*.

[Ben. Act III]

(Chapter II.—Of the Constitution of the Port Commission.—
Sections 10A—12.)

(2) Subject to the provisions of section 10A, every person appointed by the Central Government to be a Commissioner by virtue of an office shall, until the Central Government by notification in the *Official Gazette* otherwise directs, continue to be a Commissioner so long as he continues to hold that office.

(3) The term of office of every Commissioner appointed by name or elected as such and holding office on the 1st day of April next following the commencement of the Port Trusts and Ports (Amendment) Act, 1951, shall be deemed to have expired on that day.

XXXV of
1951.tion of
Commis-
sioners.

¹10A. A Commissioner appointed by the Central Government whether by name or by virtue of an office or an elected Commissioner may at any time resign his office by giving notice in writing to the Chairman who shall forward the same to the Central Government, and on such resignation being accepted by that Government, he shall cease to be a Commissioner, and his office shall thereupon become vacant.

Salary and
allowances
of Chair-
man and
Deputy
Chairman,
and fees
payable to
Commis-
sioners for
attendance
at meetings.

²11. ³[(1) the Chairman and Deputy Chairman shall receive such salary and allowances, if any, as may from time to time be fixed by the Central Government.]

(2) [Omitted by sec. 67 (2) of the Port Trusts and Port (Amendment) Act 1951 (XXXV of 1951).]

(3) The ⁴[Central Government] may determine whether any and what fees shall be paid to the Commissioners ⁵[or any class of them] other than the Chairman and the Deputy Chairman for attendance at meetings for the transaction of the business of the Trust.

(4) The payment of any salary, allowances, or fees referred to in sub-section (1), (2) or (3) shall be subject to such conditions and restrictions as may be fixed by the ⁴[Central Government].

Power to
grant
leave of
absence to
Chairman.

12. It shall be lawful for the ⁴[Central Government] to grant leave of absence to the ⁶[Chairman] and to appoint a person to officiate for such ⁶[Chairman] during his absence on leave.

¹Section 10A was inserted by sec. 66 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²Section 11 was substituted for the original section by sec. 5 of Calcutta Port (Amendment) Act, 1920 (Ben. Act. VII of 1920).

³Sub-section (1) of section 11 was substituted by sec. 67 (1) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴See foot-note 2 on page 10, *ante*.

⁵These words were inserted by sec. 67 (3) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶This word was substituted for the word "Vice-Chairman" by sec. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

of 1890.]

(Chapter II.—Of the Constitution of the Port Commission.—
Sections 13—14.)

13. (1) The ¹[Central Government] shall also fix the amount of ²[leave salary and allowances, if any] to be granted to the ³[Chairman], and the salary ⁴[and allowances, if any.] to be paid to the person who shall be appointed to his office.

Central Government to fix leave allowance of Chairman.

(2) Any person appointed under ⁵[the last preceding] section to act for the ⁶[Chairman] shall, while so acting, have all the powers, and be liable to all the restrictions, and limitations, which the ⁷[Chairman] under this Act has and is liable to.

⁸13A. The Central Government may fix the amount of gratuity or compassionate allowance, if any, which shall be paid to the Chairman or Deputy Chairman on his retirement from office and may determine the conditions under which the said gratuity or compassionate allowance shall be so payable.

Gratuity, etc., for Chairman or Deputy Chairman.

⁹13B. Notwithstanding anything contained in this Act, the Central Government may permit the Chairman and the Deputy Chairman or either of them who, before such appointment, had been an employee of the Commissioners, to join the provident fund established by the Commissioners under section 30A for the benefit of their employees and may determine the conditions and restrictions subject to which such permission may be given.

Permission to Chairman and Deputy Chairman to join provident fund.

¹⁰14. (1) Every vacancy in the office of an elected Commissioner or of a Commissioner appointed by name caused by the expiration of the term of office of such Commissioner shall be filled by election or appointment, as the case may be, within one month immediately preceding the date of expiration of such term.

Filling of vacancies in the office of Commissioners.

(2) Every vacancy in the office of a Commissioner appointed by the Central Government by virtue of an office caused by the expiration of the term of office of such Commissioner or otherwise shall be filled by appointment within one month of the occurrence of such vacancy.

¹See foot-note 2 on page 10, *ante*.

²These words were substituted for the words "leave allowance" by sec. 68 (1) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³See foot-note 6 on page 14, *ante*.

⁴These words were inserted by sec. 68 (2) of the Port Trusts and Port (Amendment) Act, 1951 (XXXV of 1951).

⁵These words within square brackets were substituted for the word "this" by sec. 2 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben Act IV of 1895).

⁶Section 13A was substituted for the original section by sec. 69 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁷Section 13B was inserted by sec. 70, *ibid*.

⁸Section 14 was substituted for the original section by sec. 71, *ibid*.

[Ben. Act III]

(Chapter II.—Of the Constitution of the Port Commission.—
Sections 15—16A.)Mode of
filling
temporary
vacancies.

15. (1) A temporary vacancy caused by the absence on leave of any ¹[elected or appointed Commissioner], for a period not less than three months nor more than one year shall be filled up by election ²[or appointment, as the case may be,] ³* * *

Term of
temporary
appoint-
ments.

(2) A person elected ⁴[or appointed] ⁵* * * under this section to fill a temporary vacancy shall hold office until the expiry of the term of leave granted to the Commissioner whose place he fills.

⁵(3) Nothing in this section shall prevent a person being elected or appointed as a Commissioner for a period shorter than three months in the place of an absent Commissioner, on the application of the Commissioners in meeting if the absentee is an elected Commissioner, or at the discretion of the Central Government if he is a Commissioner appointed by the Central Government.

Filling of
casual
vacancies.

⁶16. Any casual vacancy in the office of an elected Commissioner or of a Commissioner appointed by name caused by the death or resignation of such Commissioner or by virtue of the provisions of sub-section (2) of section 17, shall be filled within one month by election or appointment, as the case may be, in the manner hereinbefore provided :

Provided that the Commissioner so elected or appointed shall retain his office so long only as the vacating Commissioner would have retained the same if such vacancy had not occurred.

Saving
provision
for appoint-
ment or
election of
Commis-
sioners
after the
prescribed
period.

⁷16A. (1) Nothing in the foregoing provisions shall prevent a person being appointed by the Central Government to fill any vacancy in the office of a Commissioner appointed by the Central Government either by name or by virtue of an office after the expiration of the period specified therefor in section 14 or section 16, as the case may be, if for any reason it has not been possible for the Central Government to make the appointment within the said period.

¹These words were substituted for the words "elected commissioners" by sec. 72 (1) (a), of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²These words were inserted by sec. 72 (1) (b), *ibid*.

³The words "or appointment" in sub-section (1) and the words "or appointed" in sub-section (2) were omitted by sec. 8 of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

⁴These words were inserted by sec. 72 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵This sub-section (3) was inserted by sec. 72 (3) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶This new section 16 was substituted for the original sec. 16 by sec. 73, *ibid*.

⁷This new section was inserted by sec. 74, *ibid*.

of 1890.]

(Chapter II.—Of the Constitution of the Port Commission.—
Section 17.)

(2) If the Central Government is satisfied that an electing body has failed to elect a Commissioner within the period specified therefor in section 14 or section 16, as the case may be, for reasons beyond its control, the Central Government may, by notification in the *Official Gazette*, direct that the election shall be held on or before such date (after the expiration of the said period) as may be specified in the notification.

(3) Where a Commissioner is appointed by name or elected under sub-section (2) of this section or appointed under section 7, to fill any such vacancy as is referred to in section 14 after the expiration of the period specified therefor in that section, the term of office of such Commissioner shall commence on the date on which his appointment or election, as the case may be, is notified in the *Official Gazette* and shall expire on the date on which his term of office would have expired if his appointment or election, as the case may be, had been made within the period so specified in section 14.

¹17. (1) A person shall be disqualified to be a Commissioner if he—

Disquali-
fication of
Commis-
sioners.

- (a) is an undischarged insolvent, or
- (b) has been convicted and sentenced to imprisonment for an offence involving moral turpitude punishable with imprisonment for a term exceeding six months, or to transportation, such conviction not having been subsequently reversed or quashed, unless the Central Government has by order removed the disqualification.
- (2) Every person other than an *ex-officio* Commissioner or a Commissioner appointed by the Central Government by virtue of an office,—
 - (a) who, at any time after he becomes a Commissioner, shall be absent from six consecutive meetings without having the permission in that behalf of the Commissioners or who having such permission shall be absent from the meetings for period exceeding one year ; or
 - (b) who shall, at any time after he becomes a Commissioner, accept or agree to accept any office or place of profit under this Act ; or
 - (c) who shall, save with the sanction of the Central Government participate or agree to participate in the profits of any work done by order of the Commissioners or be concerned or participate in the profits of any contract entered into with the Commissioners ; or
 - (d) who becomes disqualified for any of the reasons mentioned in sub-section (1) ; or

¹Sections 17 and 17A were substituted for the original section 17 by sec. 7E of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

[Ben. Act III]

(Chapter II.—Of the Constitution of the Port Commission.—
Chapter III.—Of the Borrowing Powers of the Commission.—Sections 17A, 18.)

(e) who acts in contravention of the provisions of section 17A, shall thenceforth cease to be a Commissioner and his office shall thereupon become vacant :

Provided that no such Commissioner shall vacate his office by reason only of his being a share-holder in any registered joint stock company with which the Commissioners may enter into any contract or by reason of his being interested in any loan of money to the Commissioner :

Provided further that no such Commissioner shall vacate his office by reason of his being interested in any purchase or lease of land or premises the sale or lease of which the Commissioners may determine on at a meeting under the provisions of this Act, or of his being interested in any agreement under which facilities may be granted for the landing or shipment of goods in return for stipulated income guaranteed to the Commissioners in consideration of their undertaking to construct or provide such facilities.

Restriction
on power
of Com-
missioners
to vote
or discuss
matters
in which
they are
interested.

¹17A. A Commissioner shall not vote on, or take part in, the discussion of any question coming up for consideration at a meeting of the Commissioners or of any committee of their number, if the question is one in which he has any direct or indirect pecuniary interest by himself or his partner or in which he is interested either professionally on behalf of a client or as agent for any person other than the Central Government, a local authority or a railway company,

CHAPTER III.

OF THE BORROWING POWERS OF THE COMMISSION.

Power to
raise
money for
works.

18. If the ²[Central Government] shall, ³* * * *
* * * by an order published in the ⁴[*Official Gazette*], so direct, it shall be lawful for the Commissioners in meeting, from time to time, to raise money for the estimated cost of any of the following purposes—sanctioned by the ²[Central Government], to such extent as it may, from time to time, direct :—

(a) the construction and repair of works and erections necessary or expedient for carrying out the purposes of this Act ;

¹See foot-note 1 on page 17, *ante*.

²See foot-note 2 on page 10, *ante*.

³The words "with the previous sanction of the Governor-General in Council" were omitted by para. 8 and Sch. IV to the Government of India, (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 3 on page 10, *ante*.

of 1890.]

**(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 19, 20.)**

- (b) the acquisition of immovable and movable property requisite for such construction or repair as aforesaid ; and
- (c) the payment of such salaries, fees and expenses, and such principal and interest, as may be due by the Commissioners.

19. When an order has been published under the last preceding section, it shall be lawful for the Commissioners in meeting to borrow ¹[within such dates as may be approved by the ²Central Government] any sums of money the Commissioners may require for the objects mentioned in the last preceding section, by way of debenture on—

Power to borrow moneys by way of debenture.

- (a) the security of the property now vested, or which may hereafter become vested in the Commissioners, and
- (b) the tolls, dues, rates, rents and charges leviable under this Act,

less the * * * *

sums set apart by the Commissioners as a sinking fund for the purpose of paying off the loans contracted under the authority of this Act or any enactment hereby repealed.

20. ⁴[(1) All debentures which are issued under the authority of this Act shall be in such form as the Commissioners, with the previous consent of the ⁵[Central Government], shall from time to time determine :

Form and transferability of debentures.

**

*]

⁷(2) The holder of any debenture in any form duly authorised under this section may obtain in exchange therefor, upon such terms as the Commissioners shall from time to time determine, a debenture in any other form so authorized.

¹These words were inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

²The words "Central Government" were substituted for the words "Governor-General in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "sum of five and a half lakhs set apart by the Commissioners as a reserve fund prior to the passing of this Act, and the further" were omitted by sec. 76 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴Sub-section (1) was substituted for sub-section (1) as amended by the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907), by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁵See foot-note 2 on page 10, *ante*.

⁶The proviso was omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷Sub-sections (2) and (3) were substituted for the original sub-section (1) by sec. 3 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 20A—23.)

¹(3) Every debenture issued by the Commissioners shall be transferable in such manner as shall be therein expressed.

Right to
sue on de-
bentures
vested in
holders.

²(4) The right to sue in respect of the moneys secured by any of such debentures, or the debenture issued under the authority of any enactment hereby repealed, shall be vested in the holders thereof for the time being, without any preference by reasons of some of such debentures being prior in date to others.

Signature
of coupons
attached
to deben-
tures.

³20A. All coupons attached to debentures issued under the authority of this Act shall bear the signature of the ⁴[Chairman] and such signature may be engraved, lithographed or impressed by any mechanical process.

Loans
contracted
by Com-
missioners
to be first
charge on
property.

21. All loans contracted by the Commissioners, whether by way of debentures or otherwise under this Act, shall be a first charge on the property now vested, or which hereafter may become vested, in the Commissioners and on the tolls, dues, rates, rents and charges leviable under this Act, as provided by section 19.

Power to
raise
money for
payment
of loans.

22. The Commissioners in meeting may at any time with the previous sanction of ⁵[and within such dates as may be approved by] the ⁶[Central Government], raise, either by borrowing from the ⁷[Central Government], or by way of debenture, any money that may be required to pay any amount for the time being due under the authority of this Act or any enactment hereby repealed.

Loans to
be con-
tracted in
India and
in Indian
currency.

23. Unless the ⁸[Central Government] * * * * * shall, by an order published in the ¹⁰[Official Gazette], otherwise direct all loans contracted by the Commissioners, under this Act shall be contracted in India and in the Indian currency.

¹See foot-note 7 on Page 19, *ante*.

²This sub-section was renumbered as sub-section "(4)" by sec. 8 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

³Section 20A was inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1908 (Ben. Act I of 1908).

⁴This word within square brackets was substituted for the word "Vice-Chairman" by sec. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁵These words were inserted by sec. 4 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁶These words were substituted for the words "Governor-General in Council" by paragraph 4 (7) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷These words were substituted for the words "Secretary of State for India in Council" by para. 8 and Sch. IV, *ibid*.

⁸See foot-note 2 on page 10, *ante*.

⁹The words "with the previous sanction of the Governor-General in Council" were omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

¹⁰See foot-note 8 on page 10, *ante*.

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 24, 24A.)

24. ¹(1) The Commissioners shall, in respect of each loan contracted by them by way of debenture under sections 19 and 22, pay into a sinking fund half-yearly out of their income before making any other disbursements such amounts as will suffice to liquidate the nominal amount of each such loan within such period as the ²[Central Government] may in each case direct, provided that such period may exceed the term of the debenture loan but shall in no case exceed sixty years.

Establishment of sinking fund.

(2) The Commissioners in meeting may, at any time, apply the whole or any part of a sinking fund, set apart under this section, in or towards the discharge of the moneys for the repayment of which the fund has been established :

Application of sinking fund.

Provided that they pay into the fund in each year, and accumulate, until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

(3) Such sinking fund shall be invested in ³[public securities or in such other securities as the Central Government may approve in this behalf], in the names of two trustees, one being the Commissioner, and the other a person to be appointed by the ⁴[Central Government].

Investment of sinking fund.

⁵24A. ⁶[(1)] The sinking fund established for the liquidation of any loan shall be subject to annual examination by the Accountant-General, ⁷[West Bengal], who shall ascertain whether the cash and the ⁸[current market value] of the securities at the credit of the fund are actually equal to the amount which would have been accumulated, had investments been regularly made, and had the rate of interest as originally estimated been obtained thereon.

Annual examination of sinking fund.

The Commissioners shall pay forthwith into the sinking fund any amount which the Accountant-General may certify to be deficient, unless the ⁹[Central Government] specially sanctions a gradual readjustment.

¹Sub-section (1) was substituted for the original sub-section by sec. 2 of the Calcutta Port (Amendment) Act, 1934 (Ben. Act IV of 1934).

²See foot-note 6 on page 20, *ante*.

³These words were substituted for the words "the Promissory notes and other securities of the Central Government or in the debentures issued by the Commissioners under this Act" by sec. 77 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴See foot-note 2 on page 10, *ante*.

⁵Section 24A was inserted by sec. 6 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁶Section 24A was re-numbered as sub-section (1) of that section by sec. 8 of the Calcutta Port (Amendment) Act, 1934 (Ben. Act IV of 1934).

⁷These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁸These words were substituted for the words "current value" by sec. 78 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁹See foot-note 2 on page 19, *ante*.

(Chapter III.—Of the Borrowing Powers of the Commission.—
Section 24B.)

¹(2) If the cash and the ²[current market value] of the securities at the credit of the sinking fund are in excess of the amount which should be at its credit the Accountant-General shall certify the amount of this excess, and the Commissioners in meeting may, with the previous sanction of the ³[Central Government],—

- (a) withdraw the whole or any part of the certified excess, in which case the trustees in whose names the sinking fund is invested under sub-section (3) of section 24 shall forthwith transfer securities of the requisite ²[current market value], or cash and securities of the requisite ²[current market value], to the Commissioners ; or
- (b) reduce or discontinue the half-yearly contributions to the sinking fund prescribed by sub-section (1) of section 24 ; or
- (c) adopt a combination of these measures.

¹(3) The withdrawal of the whole or any part of an amount which on the annual examination of the sinking fund by the Accountant-General was ascertained to be in excess of the amount which should have been at the credit of that fund and the transfer, for the purpose of such withdrawal, of cash and securities of the requisite ²[current market value] to the Commissioners by the trustees in whose names the sinking fund was invested under sub-section (3) of section 24, made at any time before the commencement of the Calcutta Port (Amendment) Act, 1934, shall be and shall be deemed always to have been valid and lawful.

Ben. Act
IV of
1934.

Establish-
ment of
reserve
fund.

⁴24B. (1) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, shipwreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act :

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the ⁶[Central Government].

¹Sub-sections (2) and (3) were added by sec. 3 of the Calcutta Port (Amendment) Act, 1934 (Ben. Act IV of 1934).

²See foot-note 8 on page 21, *ante*.

³See foot-note 2 on page 19, *ante*.

⁴Sections 24B and 24C were inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1928 (Ben. Act VI of 1928).

⁵See foot-note 2 on page 10, *ante*.

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 24C, 25.)

(2) Such reserve fund or funds may be invested only in ¹[public securities or in such other securities as the Central Government may approve in this behalf].

²24C. (1) For the purposes of any investment which the Commissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the ³[Central Government] has been given :

Power to
reserve
debentures
or securi-
ties for
Commis-
sioners.

Provided that in the case of any issue offered to the public, the intention so to reserve and set apart such debentures or securities shall have been notified as a condition of the issue of the loan.

(2) The issue of any such debentures or securities direct to and in the name of the Commissioners themselves, shall not operate to extinguish or cancel such debentures or securities, but every debenture or security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(3) The purchase by the Commissioners or the transfer, assignment or endorsement to the trustees of the sinking fund or the Commissioners, of any debenture or security issued by the Commissioners, shall not operate to extinguish or cancel any such debenture or security, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to any other person.

(4) All the debentures or securities of the Commissioners heretofore purchased by, issued, transferred or assigned to, or indorsed into the names of the Commissioners or any person on their behalf, and all debentures and securities heretofore issued by way of renewal, consolidation or sub-division of any such debentures or securities, shall be and shall be deemed to have always been valid and negotiable in all respects and in the same manner and to the same extent as if held by, or issued, transferred, assigned, or indorsed to, any other person.

25. It shall be lawful for the Commissioners in meeting, from time to time, to borrow moneys from the ⁵[Central Government] at such rate of interest and upon such terms as to the time of re-payment and otherwise as the ⁶[Central Government] may approve, for the construction, equipment, maintenance and management of any works or arrangements sanctioned by the ⁷[Central Government] under this Act.

Power to
borrow
moneys
for con-
struction
of works:

¹These words were substituted for the words "the promissory notes and other securities of the Central Government or in the debentures issued by the Commissioners under this Act" by sec. 79 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²See foot-note 4 on page 22, *ante*.

³See foot-note 2 on page 10, *ante*.

⁴This sub-section (4) was added by sec. 80 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵See foot-note 7 on page 20, *ante*.

⁶See foot-note 6 on page 20, *ante*.

⁷See foot-note 2 on page 10, *ante*.

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 26—27A.)

Government how to proceed on default of payment of interest.

26. In case of default of payment of any interest, the ¹[Central Government] shall have the same remedies as may be available to other debenture-holders of the Commissioners under this Act ; but nothing in this Act shall be deemed to confer upon the ²[Central Government] any prior or greater right than that conferred upon other debenture-holders of the Commissioners under this Act.

Power to repay loans before due date.

27. ³[The Commissioners in meeting may, with the previous sanction of the Central Government, apply any sums], out of any moneys which may come into their hands under the provisions of this Act, and which can be so applied without prejudicing the security of the other debenture-holders of the Commissioners under this Act, ⁴[in repaying] to the ⁵[Central Government] any sum which, for the time being, may remain due to ⁶[it] under the provisions of this Act for principal, although, the time fixed for the repayment of the same shall not have arrived :

Provided that no such repayment shall be made of any sum less than ten thousand rupees ; and that, if such repayment is made, the amount of interest in each succeeding half-yearly instalment shall be adjusted so as to represent exactly the interest due on the outstanding principal.

Right of survivors of joint or several payees of debentures or securities.

⁷27A. (1) Notwithstanding anything in section 45 of the Indian Contract Act, 1872,— IX of 1872.

(a) when any debenture or security issued by the Commissioners under this Act is payable to two or more persons jointly, and either or any of them dies, the debenture or security shall be payable to the survivor or survivors of those persons, and

(b) when any such debenture or security is payable to two or more persons severally, and either or any of them dies, the debenture or security shall be payable to the survivor or survivors of those persons or to the representatives of the deceased or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after the commencement of this Act.

¹ See foot-note 7 on page 20, *ante*.

² These words within square brackets were substituted for the words "said Secretary of State for India in Council" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³ These words were substituted for the words "It shall be lawful for the Commissioners in meeting, if they think fit" by sec. 81 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴ These words were substituted for the words "to repay" by sec. 81 (b), *ibid*.

⁵ This word was substituted for the word "him" by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶ New sections 27A to 27L were inserted by sec. 82 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 27B—27F.)

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any debenture or security to which sub-section (1) applies.

VII of
1913.
II of 1912.

(4) For the purposes of this section, a body incorporated under the Indian Companies Act, 1913, or the Co-operative Societies Act, 1912, or any other enactment for the time being in force, whether within or without India, relating to the incorporation of association of individuals, shall be deemed to die when it is dissolved.

¹27B. Where two or more persons are joint holders of any debenture or security issued by the Commissioners under this Act, any one of those persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Commissioners by any other of the holders.

Power of
one of two
or more
joint
holders to
grant
receipts.

XXXVI of
1881.

¹27C. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, no indorsement of a debenture or security issued by the Commissioners under this Act and transferable by indorsement shall be valid unless made by the signature of the holder inscribed on the back of the debenture or the security itself.

Indorse-
ments to
be made on
debenture
or security
itself.

¹27D. Notwithstanding anything in the Negotiable Instruments Act, 1881, a person shall not by reason only of his having indorsed any debenture or security issued by the Commissioners under this Act be liable to pay any money due either as principal or as interest thereunder.

Indorser
of deben-
tures or
securities
not liable
for amount
thereof.

¹27E. (1) The signature of the persons authorised to sign debentures or securities on behalf of the Commissioners may be printed, engraved or lithographed or impressed by such other mechanical process as the Commissioners in meeting may direct, on the debentures or securities.

Impres-
sion of sig-
nature on
debentures
and securi-
ties.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

¹27F. (1) When any debenture or security issued by the Commissioners under this Act, is alleged to have been lost, stolen or destroyed either wholly or in part, and a person claims to be the person to whom, but for the loss, theft or destruction it

Issue of
duplicate
debentures
and securi-
ties.

¹See foot-note 6 on page 24, ante.

[Ben. Act III]

**(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 27G, 27H.)**

would be payable, he may, on application to the Commissioners and on producing proof to their satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by rules made under section 27-I, obtain from the Commissioners an order for—

- (a) the payment of interest in respect of the debenture or security said to be lost, stolen or destroyed pending the issue of a duplicate debenture or security, and
- (b) the issue of a duplicate debenture or security payable to the applicant.

(2) An order shall not be passed under sub-section (1) until after the issue of such notification as may be prescribed by rules made under section 27-I of the loss, theft or destruction.

(3) A list of the debentures or securities in respect of which an order is passed under sub-section (1) shall be published in such manner as may be prescribed by such rules.

(4) If at any time before the Commissioners become discharged under the provisions of this Act from liability in respect of any debenture or security the whole of which is alleged to have been lost, stolen or destroyed, such debenture or security is found, any order passed in respect thereof under this section shall be cancelled.

Issue of
converted
etc., debentures
and
securities.

¹27G. (1) The Commissioners may, subject to such conditions as may be prescribed by rules made under section 27-I, on the application of a person claiming to be entitled to any debenture or security or debentures or securities issued by the Commissioners under this Act, on being satisfied of the justice of the claim and on delivery of the debenture or security or debentures or securities receipted in the manner prescribed by such rules and on payment of such fees, if any, as may be so prescribed, convert, consolidate or sub-divide the debenture or security or debentures or securities and issue to the applicant a new debenture or debentures or securities accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into a debenture or security or debentures or securities of the same or different classes or of the same or different loans.

Discharge
in certain

²27H. Notwithstanding anything contained in section 10 of the Indian Limitation Act, 1908,—

IX of 1908.

- (i) on payment of the amount due on any debenture or security issued by the Commissioners under this Act on or after the date on which payment becomes due, or

¹See foot-note 6 on page 24, ante.

of 1890.]

*(Chapter III.—Of the Borrowing Powers of the Commission.—
Section 27-I.)*

- (ii) when a duplicate debenture or security has been issued under section 27F, or
- (iii) when a new debenture or security or debentures or securities has or have been issued upon conversion, consolidation or sub-division under section 27G,

the Commissioners shall be discharged from all liability in respect of the debenture or security or debentures or securities so paid or in place of which a duplicate or new debenture or security or debentures or securities has or have been issued—

- (a) in the case of payment after the lapse of six years from the date on which payment was due ;
- (b) in the case of a duplicate debenture or security—after the lapse of six years from the date of the publication under sub-section (3) of section 27F of the list in which the debenture or security is first mentioned or from the date of the last payment of interest on the original debenture or security, whichever date is later ;
- (c) in the case of a new debenture or security issued upon conversion, consolidation or subdivision—after the lapse of six years from the date of the issue thereof.

¹27-I. (I) The Commissioners in meeting may from time to time make rules to provide for all or any of the following matters, namely :—

Powers of
Commis-
sioners to
make rules.

- (a) the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to the debentures and other securities issued by the Commissioners under this Act ;
- (b) the manner in which payment of interest in respect of such debentures or other securities is to be made and acknowledged ;
- (c) the circumstances and the manner in which such debentures and other securities may be renewed ;
- (d) the circumstances in which such debentures and other securities must be renewed before further payment of interest thereon can be claimed ;
- (e) the forms in which the debentures or other securities delivered for renewal, conversion, consolidation or sub-division are to be receipted ;
- (f) the proof which is to be produced by persons applying for duplicate debentures or other securities ;

¹ See foot-note 6 on page 24, ante.

[Ben. Act III]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Sections 27J, 27K.)

- (g) the form and manner of publication of the notification mentioned in sub-section (2) of section 27F and the manner of publication of the list mentioned in sub-section (3) of that section ;
- (h) the nature and amount of indemnity to be given by a person applying for the payment of interest on such debentures or other securities alleged to have been wholly or partly lost, stolen or destroyed or for the issue of duplicate debentures or other securities ;
- (i) the conditions subject to which such debentures or other securities may be converted, consolidated or sub-divided ;
- (j) generally all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided debentures or other securities ; and
- (k) the fees to be levied in respect of the issue of duplicate debentures or other securities and of the renewal, conversion, consolidation and sub-division of the debentures or other securities issued by the Commissioners under this Act.

(2) The Commissioners in meeting may from time to time repeal, alter or add to any rule made under this section.

(3) No rule or repeal or alteration of, or addition to, a rule shall have effect until approved by the Central Government and such approval has also been published in the *Official Gazette*.

(4) No rule and no repeal or alteration of, or addition to, any rule shall be approved by the Central Government until the same has been published in two consecutive issues of the *Official Gazette* and until fourteen days have expired from the date on which the same had been first published in that *Gazette*.

(5) The Central Government may at any time by notification in the *Official Gazette* cancel any rule published under the provisions of this section.

IX of 1908.

¹27J. Notwithstanding anything contained in the Indian Limitation Act, 1908, no claim shall lie against the trustees of the sinking fund in respect of any debenture issued by the Commissioners under this Act after the lapse of six years from the earliest date on which demand could have been made for the payment of the amount due on such debenture.

Limitation of claims against sinking fund trustees in respect of debentures.

¹27K. Notwithstanding anything contained in this Act, the Commissioners in meeting may borrow moneys by means of temporary overdraft or otherwise by pledging the debentures or other securities held by them in their reserve funds or on the security of their fixed deposits in their banks :

Power of Commissioners to borrow by means of temporary overdraft or otherwise.

¹See foot-note 6 on page 24, ante.

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Chapter IV.—Of the General Powers of the Commission.—
Part I.—Of the Duties of the Commission.—Sections 27KK—28.)

Provided that such temporary overdraft or other loans—

- (a) shall not at any time have a longer currency than six months, and
- (b) shall not be taken without the previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds ten lakhs of rupees :

Provided further that all moneys so borrowed by temporary overdraft or otherwise shall be expended for the purposes of this Act.

¹27KK. Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commissioners in meeting may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other bank or institution in any country outside India ; and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Central Government shall otherwise provide.

Power of Commissioners to borrow money from the International Bank for Reconstruction and Development or other foreign institution.

IX of 1914. ²27L. Nothing contained in this Act shall be deemed to affect the power of the Commissioners in meeting to raise loans under the Local Authorities Loans Act, 1914.

Power of the Commissioners to raise loans under the Local Authorities Loans Act, 1914.

CHAPTER IV.

OF THE GENERAL POWERS OF THE COMMISSION.

PART I.—Of the Duties of the Commission.

28. (1) No act or proceeding of the Commissioners shall be invalidated or illegal in consequence only of there being a vacancy in the number of the Commissioners at the time of doing or executing such act or proceeding.

Acts or proceedings of Commissioners not to be invalidated in consequence of vacancy.

¹Inserted by sec. 8 of the Bombay, Calcutta and Madras Port Trusts (Amendment) Act, 1958 (XIII of 1958).

²See foot-note 6 on page 24, ante.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Sections 29—30A.)

Proceedings not to be invalidated by informality in election or appointment.

(2) All proceedings of the Commissioners, or of any person acting as a Commissioner in the *bona fide* belief that he was duly elected or appointed, shall, notwithstanding it be afterwards discovered that there was some defect in the election or appointment of the Commissioner or person acting as aforesaid, be as valid as if every such person had been duly elected or appointed to be a Commissioner.

Commissioners may appoint Committees.

29. The Commissioners may, from time to time, in accordance with a resolution passed at a meeting, appoint Committees of their number for carrying into effect any part of the provisions of this Act, with such powers, and under such instructions, directions or limitations as by such resolution shall be defined; and on any such Committee three members shall be a quorum; and the Commissioners in meeting shall have power to alter or discontinue any such Committee.

Commissioners to prepare and in meeting sanction, schedule of establishment.

30. (1) The Commissioners shall, from time to time, prepare, and in meeting sanction, a schedule of the staff of ¹[employees] whom they shall deem it necessary and proper to maintain for the purposes of this Act.

(2) Such schedule shall also set forth the amount and nature of the salaries, fees and allowances which the Commissioners in meeting sanction for each such ²[employee]:

Provided that artisans, porters and labourers, and sirdars of porters and labourers, shall not be deemed to be ³[employees] within the meaning of this section, or of ⁴[section 32] of this Act.

Power to Commissioners to establish a provident fund and to grant long service bonuses.

⁵30A. The Commissioners may, with the approval of the ⁶[Central Government]—

- (i) establish a provident fund for the benefit of their ¹[employees] appointed in accordance with the provisions of this Act, and compel all or any of such ¹[employees] to contribute to, and make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund; and

¹This word was substituted for the words "officers and servants" by sec. 88 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This word was substituted for the words "officer or servant" by sec. 88. *ibid.*

³This word was substituted for the words "officers or servants" by sec. 88, *ibid.*

⁴This word and figures within square brackets were substituted for the words, figures, brackets and letters "section 81, except clauses (g) and (h) thereof, section 82 or section 83" by sec. 84, *ibid.*

⁵Section 80A was inserted by sec. 4 of the Calcutta Port (Amendment) Act, 1928 (Ben. Act VI of 1928).

⁶See foot-note 2 on page 10, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Section 31.)

- (ii) make payments out of their general revenues of bonuses based on the length of service of the ¹[employees] appointed in accordance with this Act, to such ¹[employees] or to the widows or dependent children ²[or other surviving dependent relatives] of such of them as may die while still in the service of the Commissioners.

31. (1) The Commissioners in meeting shall, from time to time, frame rules—

Power to
frame
rules.

- (a) for regulating the grant of leave to the ¹[employees] of the Commissioners ;
- (b) for authorizing the payment of allowances to the said ¹[employees], or to certain of them whilst absent on leave ;
- (c) for determining the remuneration to be paid to the persons appointed to act for any such ³[employees] during their absence on leave ;
- (d) for regulating the period of service of all such ¹[employees] ;
- (e) for determining the conditions under which such ¹[employees] or any of them shall, on retirement, receive pensions, gratuities or compassionate allowances, and the amount of such pensions, gratuities or compassionate allowances ; ⁴[and]
- (f) for authorizing the payment of contributions at certain prescribed rates, and, subject to certain prescribed conditions, to any provident fund which may, with their approval, be established by the ¹[employees] appointed under this Act ; ⁵*
- ⁶(g) for prescribing the rates and the conditions under which the contributions may be paid by the Commissioners and their ¹[employees] to the provident fund which may be established under section 30A, and for determining the conditions of payments from the fund and the conditions of payments under clause (ii) of section 30A of bonuses based on length of service ; ⁷*

¹ See foot-note 1 on page 30, *ante*.

² These words were inserted by sec. 85 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³ See foot-note 3 on page 30, *ante*.

⁴ *Sic* Omit "and."

⁵ The word "and" was omitted by sec. 5(1)(a) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

⁶ Clause (g) was inserted by sec. 5(1)(b), *ibid*.

⁷ The word "and" was omitted by sec. 86 (1) (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Section 31.)

¹[(gg) for authorising the payment of contributions to any welfare fund or loan fund which may be established by the Commissioners for the benefit of their employees :

Provided that no such loan fund shall be established without the previous sanction of the Central Government and the maximum rate of annual contribution to any such welfare fund or loan fund and the maximum amount to which any such fund may be allowed to accumulate shall be fixed from time to time by the Central Government] ;

²[(h)] for determining the conditions under which pensions, gratuities or compassionate allowances may be paid to any of such ³[employees] injured, or to surviving relatives of any such ⁴[employees] killed, in the execution of their duty, whether the injury or death occurred before or after the commencement of the Calcutta Port (Amendment) Act, 1910 ;

Ben. Act
I of 1910.

⁴(i) for regulating the recruitment, promotion, conduct, discipline, punishment and any other matter relating to the terms and conditions of service applicable to the employees of the Commissioners, or allotment of premises to them or their rights and their privileges, not covered by any of the foregoing clauses.

* * * * *

Central
Govern-
ment to
determine
right to
pension,
etc.

⁶(2) In the event of any question arising as to the right of any ⁷[employee], or any surviving relative of any ⁷[employee], to any pension, gratuity or compassionate allowance referred to in clause (e) or ⁸[clause (h)], or as to the amount thereof, such question shall be determined by the ⁹[Central Government].

¹This clause was inserted by sec. 86(1) (b), of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This clause was re-numbered as clause (h) by sec. 5(1)(c) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

³See foot-note 3 on page 80, *ante*.

⁴Clause (i) was inserted by sec. 86 (1) (c) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵The proviso was omitted by sec. 86 (1) (d), *ibid*.

⁶This sub-section was substituted for the original sub-section by sec. 8(2) of the Calcutta Port (Amendment) Act, 1910 (Ben. Act I of 1910).

⁷See foot-note 2 on page 80, *ante*.

⁸This word, letter and brackets were substituted for the word, letter and brackets "clause (g)" by sec. 5(2) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

⁹See foot-note 2 on page 10, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Sections 32, 32A.)

(3) Rules made under ¹[sub-section (1)] shall not take effect unless and until they have been ²[approved] by the ³[Central Government].

Rules not to take effect until confirmed by Central Government.

⁴32. (1) Subject to the provisions of the Schedule, for the time being in force, sanctioned by the Commissioners under section 30 and of the rules framed under section 31 and also to the provisions of section 34, the power of appointing, promoting, granting leave to, suspending, fining, reducing or dismissing, or of disposing of any other question relating to the services of the employees of the Commissioners including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee shall be exercised, in the case of employees whose maximum monthly salary exclusive of allowances is less than one thousand rupees, by the Chairman or the Deputy Chairman, and in every other case, by the Commissioners in meeting.

Appointments, etc., by whom to be made.

(2) The Chairman may, upon such terms as he may think fit and subject to the provisions referred to in sub-section (1) and to the Chairman's powers of revision and control, delegate to the head of any department for the time being all or any of his powers under the said sub-section in respect of the employees of that department whose monthly maximum salary, exclusive of allowances, does not exceed three hundred and fifty rupees.

(3) Notwithstanding anything contained in sub-section (1), the power to make appointment to posts of heads of departments shall be exercisable only by the Central Government after consultation with the Chairman.

(4) The Central Government may by order specify each of the posts the incumbent of which shall for the purposes of this section be regarded as the head of a department.

⁵32A. Notwithstanding anything contained in section 57, all fines realised under the preceding section ⁶[shall be credited to any such welfare fund as may be established by the Commissioners for the benefit of their employees].

Disposal of fines realized under section 52.

¹The word, brackets and figure were substituted for the words, brackets and letters "clauses () to (e) (both inclusive) and under clauses (g) and (h)" by sec. 86 (2) (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This word was substituted for the word 'confirmed' by sec. 86 (2) (b), *ibid.*

³See foot-note 2 on page 10, *ante*.

⁴This section 32 was substituted for the original section by sec. 87 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵Section 32A was inserted by sec. 3 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁶These words were substituted for the words "shall be disposed of in such manner as the Commissioners may think fit" by sec. 88 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

(Chapter IV.—Of the General Powers of the Commission.—Part
I.—Of the Duties of the Commission.—Sections 33—35.)

33. [Commissioners in meeting to exercise certain powers with respect to ¹[employees].—Rep. by sec. 89 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951.)

Certain orders of Commissioners subject to previous sanction of Central Government.

²34. (1) Every order made by the Commissioners under section 30 or section 32, save where such order has been made in accordance with the rules, for the time being in force, framed under section 31, shall so far as the same relates to the Deputy Chairman or to any employee of the Commissioners whose maximum monthly salary exclusive of allowances is not less than one thousand rupees, be subject to the sanction of the Central Government.

(2) For the purposes of sub-section (1), any person who may, from time to time, be employed as Consulting Engineer to the Commissioners, otherwise than on the basis of payment of monthly salary, shall be deemed to be an employee whose maximum monthly salary exclusive of allowances is not less than one thousand rupees.

Works to be constructed and carried out by Commissioners.

³35. The works to be constructed and carried out by Commissioners under the provisions of this Act may include—

- (1) docks, wharves, quays, stages, jetties and piers, within the Port, with all necessary and convenient arches, drains, landing-places, ⁴[shelters for passengers], stairs, fences and approaches; and quarters and buildings necessary for the residence of the officers employed therefor;
- (2) railways;
- (3) warehouses and sheds, with all necessary appliances for receiving and storing goods landed or to be shipped or carried, and places suitable for the sampling and selling of such goods;
- (4) laying down moorings for carrying out the purposes of this Act; and the erection of cranes, scales, and all other necessary means and appliances for loading and unloading vessels;
- (5) reclaiming, enclosing and raising any part of the river bank or the river bed within the Port, which may be necessary for the execution of the works authorized by this Act, or otherwise for the purposes of this Act;

¹See foot-note 1 on page 80, ante.

²This new section 34 was substituted for the original section by sec. 90 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³Section 35 was substituted for the former section by sec. 2 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

⁴These words were inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1926 (Ben. Act I of 1926).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Sections 36, 37.)

- (6) the construction and application of dredgers and other machines for clearing, deepening and improving the river bed within the Port ;
- (7) the building of steam-vessels required for the purpose of towing vessels in Port ;
- ¹(7a) the building of vessels for the carrying of passengers and their personal effects within, or partly within and partly without, the limits of the Port ;
- (8) the construction of such works without the limits of the Port as shall be necessary for the protection of works executed under this Act ; and all such other works and appliances as may, in the opinion of the Commissioners in meeting, be necessary for carrying out the purposes of this Act ;
- ²(9) the sinking of tubewells and the equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water to shipping at the Port.

36. (1) The ³[Central Government] may, at any time, order a local survey and examination of any works of the Commissioners under this Act, or the intended site thereof.

Government may order local survey and examination of works.

(2) The cost of such survey and examination shall be borne and paid by the Commissioners out of the moneys in their hands by virtue of this Act.

Cost of survey and examination to be borne by Commissioners.

37. (1) If the Commissioners shall allow any work constructed by them under this Act to fall into disrepair, or shall not complete any work commenced by them or included in any estimate as aforesaid submitted and approved of, and shall not, after due notice in writing, proceed effectually to repair or complete such work under this Act, it shall be lawful for the ³[Central Government] to cause such work to be restored, completed or constructed, either by the officers of the ³[Central Government] or any private contractor.

Central Government to restore, complete or construct works on failure of Commissioners.

¹Clause (7a) was inserted by sec. 4 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

²Clause (9) was added by sec. 91 of the Port Trusts and Ports (Amendment) Act, 1961 (XXXV of 1961).

³See foot-note 2 on page 10, ante.

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Section 38.)

Cost of restoration, etc., of work to be debt due to Government.

Power to supersede the Commissioners.

(2) The cost of any such restoration, completion or construction shall be a charge on the works and a debt due from the Commissioners to the ¹[Central Government].

²38. (1) If, at any time, the Central Government is of opinion—

(a) that on account of grave emergency, the Commissioners are unable to perform the duties imposed on them by or under the provisions of this Act or of any other law, or

(b) that the Commissioners have persistently made default in the performance of the duties imposed on them by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Commissioners or the administrations of the Port has greatly deteriorated,

the Central Government may, by notification in the *Official Gazette*, supersede the Commissioners for such period not exceeding six months at a time, as may be specified in the notification :

Provided that before issuing a notification under this sub-section for reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Commissioners to show cause why they should not be superseded and shall consider the explanations and objections, if any, of the Commissioners.

(2) Upon the publication of a notification under sub-section (1) superseding the Commissioners, the following consequences shall ensue :—

(a) all the Commissioners shall, as from the date of supersession, vacate their offices as such Commissioners ;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Commissioners, shall, until the Commissioners are reconstituted under clause (b) or clause (c) of sub-section (3), be exercised and performed by such person or persons as the Central Government may direct ;

(c) all property vested in the Commissioners shall, until the Commissioners are reconstituted under clause (b) or clause (c) of sub-section (3), vest in the Central Government.

¹These words were substituted for the words "Secretary of State for India in Council" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²This section 38 was substituted for the original section by sec. 92 of the Port Trusts and Ports (Amendment) Act, 1961 (XXXV of 1961).

of 1890.]

*(Chapter IV.—Of the General Powers of the Commission.—
Part I.—Of the Duties of the Commission.— Part II.—Of
the mode of transacting Business and entering into Contracts.—
Sections 39, 40.)*

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary ; or
- (b) reconstitute the Commissioners by fresh appointment and fresh election, and in such case any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be ; or
- (c) reconstitute the Commissioners by appointment only for such period as it may consider necessary and in such a case, the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were Commissioners at the time of supersession :

Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before Parliament at the earliest possible opportunity.

39. [*Property vested in Commissioners to be transferred to, and vested in, Government.— Rep. by sec. 93 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).*]

Part II.—Of the mode of transacting Business and entering into Contracts.

40. (1) The Commissioners shall meet, for the transaction of business, ordinarily once in every fortnight.

Meetings
of Com-
missioners.

(2) Such meetings shall be held upon such day and at such hour as the Commissioners shall from time to time determine.

(3) At every meeting of the Commissioners five members shall constitute a quorum.

[Ben. Act II]

(Chapter IV.—Of the General Powers of the Commission.—Part II.—Of the mode of transacting Business and entering into Contracts.—Sections 41—44.)

Chairman
may call
special
meetings
of Com-
missioners
or Com-
mittee.

41. The Chairman, or, in his absence, the ¹[Deputy Chairman], may, whenever he thinks fit, and shall, upon request made in writing by three Commissioners or two members of any Committee, call a special meeting of the said Commissioners or Committee, as the case may be.

Chairman
and
Deputy
Chairman
to attend
and pre-
side at all
meetings
of Com-
missioners.

42. (1) The Chairman ²[and the Deputy Chairman] shall attend all meetings of the Commissioners held under this Act, unless prevented by sickness or other reasonable cause; and the Chairman or in his absence, the ³[Deputy Chairman] shall preside at every such meeting.

(2) In the absence of both the Chairman ⁴[and the Deputy Chairman], the Commissioners present at any meeting may choose one of their number to preside.

Chairman
to be
whole-
time
officer.

⁴42A. While any person is holding the office of Chairman he shall not hold any other salaried office, and, subject to any exceptions permitted by the ⁵[Central Government], shall devote his whole time and attention to his duties under this Act.

President
may ad-
journ

43. The President of any meeting at which a quorum of the Commissioners shall be present may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

Minutes of
proceed-
ings to be
kept open
for
inspection
free of
charge.

44. (1) Minutes of the proceedings of all meetings of the Commissioners under this Act shall be drawn up and fairly entered in a book to be kept for that purpose, and shall be signed by the President after each meeting.

(2) The said minutes shall, at all reasonable times, be open at the office of the Commissioners to the inspection of any Commissioner without charge ⁶[and shall, excepting such portion thereof as the Chairman may in any particular case direct, be open to the inspection also of the public at the office of the Commissioners during office hours on payment of such fee for each inspection as may from time to time be fixed by the Commissioners in meeting].

¹These words were substituted for the word "Vice-Chairman" by sec. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²These words were substituted for the words "or Vice-Chairman" by sec. 10, *ibid.*

³These words within square brackets were substituted for the word "Vice-Chairman" by sec. 10, *ibid.*

⁴Section 42A was inserted by sec. 11, *ibid.*

⁵See foot-note 2 on page 10, *ante.*

⁶These words were added by sec. 94 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part II.—Of the mode of transacting Business and entering into Contracts.—Sections 45—47A.)

¹(3) A summary of the said minutes shall, as soon as practicable, be published in the *Official Gazette*.

45. (1) Whenever necessary, the votes of the Commissioners present in meetings shall be taken by the President, and the resolution supported by the greater number of votes shall be deemed to be the resolution of the Commissioners at such meeting.

Votes to be taken by President.

(2) The President shall have a second or casting vote in all cases of equality of votes :

Provided that, when votes are taken, any Commissioner present may require that the votes given on each side shall be recorded.

46. A copy of the minutes of every meeting of the Commissioners shall, as soon as conveniently may be, be transmitted to such Secretary of the ²[Central Government] as shall, from time to time, be appointed for that purpose, and shall be preserved in the records of the office of such Secretary.

Copy of minutes of meetings to be preserved.

47. All the powers, authorities and duties in and by this Act, conferred or imposed upon the Commissioners, may be exercised and performed by the Chairman or ³[Deputy Chairman], save the powers, authorities and duties by this Act, or by any rule, by-law or order made under the provisions of this Act, conferred or imposed on, or restricted to, the Commissioners in meeting :

Chairman or Deputy Chairman may exercise certain powers of Commissioners.

Provided that such powers, authorities and duties shall not be exercised by the Chairman or ³[Deputy Chairman] in contravention of any order issued or rule passed by the Commissioners in meeting.

⁴47A. In addition to any powers or duties conferred or imposed on the Deputy Chairman by any other provision of this Act or by any rule, bye-law or order made hereunder, the Deputy Chairman shall exercise such of the powers and perform such of the duties of the Chairman as the Commissioners in meeting may, subject to the approval of the ²[Central Government], from time to time, direct.

Powers and duties of Deputy Chairman.

¹This sub-section was inserted by sec. 94 (b) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²See foot-note 2 on page 10, *ante*.

³These words were substituted for the word "Vice-Chairman" by sec. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁴Section 47A was inserted by sec. 12 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

(Chapter IV.—Of the General Powers of the Commission.—
Part II.—Of the mode of transacting Business and entering
into Contracts.—Sections 48—51.)

Powers of
Commissioners to
enter into
certain
contracts.

48. The Commissioners, in accordance with a resolution passed at a meeting, may enter into contracts with any body corporate, registered joint-stock company or private person for the execution or supply by them or him of any works, labour materials, machines, stores or for other matters necessary for carrying into effect the trusts and purposes of this Act :

¹Provided that no contract, under or by virtue of which a sum greater than seven lakhs of rupees may in any event be payable by the Commissioners, shall be valid unless it has been made with the previous sanction of the Central Government.

Powers of
Commissioners in
meeting to sanction
works and
make contracts
for their
execution.

²49. The Commissioners in meeting may sanction works and enter into contracts for their execution :

Provided that no new work, the estimated cost of which exceeds ³[ten thousand] rupees, shall be commenced until a plan and estimate have been approved by the Commissioners in meeting.

Powers of
Chairman
as to exe-
cution of
works.

²50. Notwithstanding anything contained in section 49 the ⁴[Chairman or the Deputy Chairman] may direct the execution of any work the cost of which does not exceed ⁵[five thousand] rupees, and may enter into contracts for the execution of such works ⁶[and in every such case, the Chairman or, as the case may be, the Deputy Chairman shall make a report to the Commissioners at their next meeting of any such directions given or contracts entered into by him].

Certain
new works
subject to
approval
of Govern-
ment.

⁷51. No new work, the estimated cost of which exceeds two lakhs of rupees, shall be commenced by the Commissioners until the plan and estimate thereof have been submitted to, and approved by, the ⁸[Central Government] :

¹The proviso to s. 48 was added by the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951), s. 95. The original proviso was repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²These sections 49 and 50 were substituted for the original sections by sec. 2 of the Calcutta Port (Amendment) Act, 1912 (Ben. Act I of 1912).

³These words were substituted for the words "two thousand" by sec. 96 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴These words were substituted for the word "Vice-Chairman" by sec. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁵These words were substituted for the words "one thousand" by sec. 97 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶These words were added by sec. 97 (b), *ibid.*

⁷Section 51 was substituted for the original section by the Bengal Decentralization Act, 1915 (Ben. Act IV of 1915).

⁸See foot-note 2 on page 10, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part II.—Of the mode of transacting Business and entering
into Contracts.—Sections 52—54.)

¹[Provided that where the estimated cost of any new work has been approved by the Central Government, no expenditure which exceeds by more than ten *per cent.* the estimated cost so approved shall be incurred by the Commissioners without the previous approval of the Central Government].

52. The Commissioners may in meeting, compound or compromise for, or in respect of, any claim or demand made against them, for such sum of money or other compensation as they shall deem sufficient :

Commissioners may compound or compromise for any claim or demand made against them.

²[Provided that no settlement shall be made under this section without the previous sanction of the Central Government if such settlement involves the payment by the Commissioners of a sum exceeding twenty-five thousand rupees].

³53. (1) The Chairman may, on behalf of the Commissioners, enter into any contract or agreement whereof the value or amount shall not exceed five thousand rupees, in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf ; but every other contract or agreement on behalf of the Commissioners shall be in writing and shall be signed by the Chairman and by the two other Commissioners, and shall be sealed by the common Seal of the Commissioners.

Mode of executing contracts or agreements.

(2) No contract or agreement not executed as is in this section provided shall be binding on the Commissioners.

54. No ⁴[employee] of the Commissioners shall be in anywise concerned or interested in any contract or work made with or executed for the Commissioners ;

Employee not to be concerned or interested in contracts or works of Commissioners.

and, if any such ⁴[employee] be so concerned or interested, he shall be incapable of afterwards holding or continuing in any office or employment under the Commissioners, and shall forfeit and pay the sum of five hundred rupees, which may be recovered by suit by any person with full costs of suits :

Provided that nothing in this section shall apply to any person by reason only of his being a share-holder in any registered or incorporated company which may enter into any contracts with, or execute any works for the commissioners ; or of his being interested as a debenture-holder in any loan contracted by the Commissioners.

¹This proviso was added by sec. 98 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This proviso was added by sec. 99, *ibid.*

³This new section 53 was substituted for the original section by sec. 100, *ibid.*

⁴See foot-note 2 on page 80, *ante.*

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—
Part III.—Of the Property of the Commissioners.—Sections
55—58.)

PART III.—Of the Property of the Commissioners.

Powers of
Commissioners as
to property
within or
without
limits of
Port.

55. The Commissioners shall, for the purposes of this Act, have power to acquire and hold immovable or movable property, whether within or without the limits of the Port, by conveyance, gift, lease, assignment, or sale ¹[from the Government], or any corporate body, or any registered joint-stock company or private person; and they shall also have power in meeting to lease or sell any immovable or movable property which may have become vested in or been acquired by them:

Provided that no such sale, or other alienation or lease of any immovable property for any estate or interest exceeding the term of ²[thirty years], shall be valid unless the sanction of the ³[Central Government] to such sale, alienation or lease shall have been first obtained.

Powers of
Commissioners
in certain
cases sub-
ject to
assent of
Central
Govern-
ment.

56. It shall not be lawful for the Commissioners to demise, farm, sell or alienate any power which, by or under this Act, may become vested in them of levying tolls, dues, rates, rents, or charges, unless the assent of the ³[Central Government] to such demise, farm, sale or alienation shall have been first obtained.

Property
and
moneys of
Commissioners
to be held
upon
trust for
purposes
of Act.

57. All property vested in, or acquired or held by, and all moneys paid or payable to, the Commissioners, ⁴[shall be held by the Commissioners in trust for the purposes of this Act].

Acquisition
of land or
building
for pur-
poses of
Act.

58. (1) When any land or building is required for the purposes of this Act, the ⁵[Central Government] ⁵* * * may declare that the land or building is required for a public purpose

¹The words "from the Crown" were originally substituted for the words, "from the Governor General in Council, or the Local Government, on behalf of the Secretary of State for India in Council" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "ten years" by sec. 101 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³See foot-note 2 on page 10, *ante*.

⁴These words were substituted for the words "shall be held upon trust, for the purposes of this Act and not otherwise" by sec. 102 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵The words "in its discretion" were omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IV.—Of the Assessment of the Property of the
Commissioners.—Section 59.)

and ¹[may cause] proceedings to be taken for obtaining possession of the same ²[for the Central Government] and for determining the compensation to be paid to the parties interested, according to any law in force for the acquisition of land for public purposes.

(2) On payment by the Commissioners of the compensation payable under such law, and of the charges reasonably incurred by the Collector in respect of the proceedings thereunder, such land or building shall vest in them for the purposes of this Act.

Land or building so acquired to vest in Commissioners.

PART IV.—Of the Assessment of the Property of the
Commissioners.

59. For the purposes of municipal assessment, the annual value of the property vested in the Commissioners within the municipal limits of Calcutta shall be ascertained in the following way :—

Annual value of property vested in Commissioners how to be ascertained,

(1) The aggregate expenditure incurred in the construction of all docks, wharves, quays, stages, jetties, piers and other works belonging to the Commissioners ; also in the purchase of land ; also in the construction of offices, warehouse and other buildings belonging to them within the limits of Calcutta, as defined by the Calcutta Municipal Consolidation Act, 1888³, shall be determined.

Ben. Act II
of 1888.

(2) Expenditure incurred in procuring or putting up machinery shall not be included in such aggregate expenditure.

(3) Expenditure incurred from time to time on account of repairs necessary to maintain any works or buildings in good order shall not be included in such aggregate expenditure.

(4) Expenditure for the purpose of materially adding to, or improving, any work or building shall be included in such aggregate expenditure.

(5) Five *per cent.* on the aggregate expenditure determined in the manner hereinbefore provided shall be the annual value of the rateable property of the Commissioners, within the meaning of section 122 of the Calcutta Municipal Consolidation Act, 1888.³

¹These words were substituted for the words "may order" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words within square brackets were substituted for the words "for Government," *ibid.*

³Bengal Act, II of 1888, was repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben Act III of 1899), which was repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), which has again been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and the reference should now be construed as a reference to sec. 5, clause (11) of the last mentioned Act.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections 60—65.)

¹Provided that where any agreement has been reached between the Commissioners and the Corporation of Calcutta providing that the annual value of the properties vested in the Commissioners is to be ascertained for the purposes of municipal assessment on a basis different from that set out in the foregoing provisions of this section, the annual value may, with the approval of the State Government, be ascertained on such basis with effect from such date (which shall not be earlier than the 1st day of April, 1952) as the State Government may direct.

Sum paid as consolidated rate on annual value to be nine-tenths of amount payable by ordinary owner.

60. The sum to be paid to the Corporation of Calcutta as the consolidated rate payable on the annual value determined as in the last preceding section provided shall be nine-tenths of the amount which would be payable by an ordinary owner occupying his own buildings and lands.

Amount to be paid by four quarterly instalments.

61. Such amount shall be payable in four quarterly instalments due on the first day of April, the first day of July, the first day of October and the first day of January for the quarters beginning with those days ; and, if not so paid, the Corporation of Calcutta shall have the same remedies for the recovery of each instalment as in the case of other rate-payers.

Annual value to be determined by Calcutta Corporation.

62. The annual value shall, from time to time, be determined by the Corporation of Calcutta ; and sections 130, 131, 133, 135 and 136 of the Calcutta Municipal Consolidation Act, 1888², shall apply to such valuation.

Ben. Act II of 1888.

Annual value may be fixed by Central Government in certain cases.

63. In the event of the Commissioners being dissatisfied with the order passed on objection by the Chairman or Vice-Chairman of the Corporation of Calcutta, they may, within one month, make a reference to the ³[Central Government]; and the ³[Central Government] shall thereupon fix the annual value, in accordance with the provisions of section 59 ; and the decision of the ³[Central Government] shall be final and valid for a period of six years.

64. [First valuation when to be made, and when to take effect.—Rep. by sec. 103 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).]

¹Added by sec. 2 of the Calcutta Port (Amendment) Act, 1954 (West Ben. Act XXV of 1954).

²See foot-note 3 on page 43, ante.

³See foot-note 2 page 10, ante.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections 65—66B.)

65. (1) If, during the currency of a valuation made under the provisions of this Act, any new building, dock, jetty or other work is constructed, or any new land is acquired by the Commissioners, or any material improvement is made in any building, dock, jetty, or other work within Calcutta, the Corporation of Calcutta may determine the annual value of such new building, work or land, or of such improvement, and may add it to the annual value previously ascertained.

Calcutta Corporation to determine annual value of new buildings, etc., if acquired during currency of valuation.

(2) The provisions of sections 59 to 63 (both inclusive) shall apply to such valuation.

66. At the expiration of the first valuation made under this Act, such valuation, including any alterations made under the last preceding section, may, if so agreed upon by the Commissioners and the Corporation of Calcutta, be renewed for a further period of six years ; and may similarly be renewed, from time to time, for periods of six years.

Annual value may be renewed at expiration of first valuation.

¹66A. (1) For the purpose of municipal assessment, in cases where any land vested in the Commissioners is let out to tenants and any building or structure is erected thereon by such tenants, the annual value of such building or structure, when erected, shall be five *per cent.* on the estimated present cost of erecting such building or structure, less a reasonable amount to be deducted on account of depreciation, if any :

Mode of calculating annual value of building or structure.

²Provided that where any agreement has been reached between the Commissioners and the Corporation of Calcutta providing that the annual value of any building or structure erected on any land vested in the Commissioners let out to tenants is to be ascertained for the purposes of municipal assessment on a basis different from that set out in the foregoing provisions of this sub-section, the annual value may, with the approval of the State Government, be ascertained on such basis with effect from such date (which shall not be earlier than the 1st day of April, 1952) as the State Government may direct.

(2) The buildings and structures in each holding, as recorded in the rent register of the Commissioners, shall be separately valued and assessed.

¹66B. Such building or structure may be valued annually at the discretion of the Corporation of Calcutta, and shall be so valued on the application of the owner. When not so valued, the former valuation shall remain in force from year to year until a revaluation is made.

Building or structure to be valued.

¹Sections 66A to 66N were inserted by sec. 3 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

²Added by sec. 8 of the Calcutta Port (Amendment) Act, 1954 (West Ben. Act XXV of 1954).

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections 66C—66G.)

Sum to be paid as consolidated rate.

¹66C. The sum to be paid to the Corporation of Calcutta as the consolidated rate payable on the annual value of such building or structure as determined in accordance with the provisions of the last preceding section shall be the total amount of the rates fixed under section 71 of the Calcutta Municipal Consolidation Act, 1888.²

Ben. Act II of 1888.

Returns of the measurements to be furnished.

¹66D. The Corporation of Calcutta, by a notice in writing, may require the owner of any such building or structure to furnish them with returns or the measurements thereof; and the Corporation of Calcutta or any person authorized by them in that behalf may, at any time between the hour of seven in the forenoon and sunset, enter on and inspect, survey and measure such building or structure, after giving to such owner a notice in writing of their intention, not less than twenty-four hours previous to such entry and inspection.

Penalty for furnishing false return.

¹66E. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required so to do, or knowingly makes a false or incorrect return.

and whoever hinders, obstructs or prevents the Corporation of Calcutta, or any person appointed by the Corporation of Calcutta as aforesaid, from entering, inspecting, surveying or measuring any such building or structure,

shall be liable to a fine not exceeding Rs. 200 for every such offence.

Notice before valuing to be given to the Commissioners and owner.

¹66F. (1) Before valuing any such building or structure in accordance with the provisions of section 66B, the Corporation of Calcutta shall give notice to the Commissioners and the owner that, on or after a date not less than fifteen days from the receipt of such notice by the Commissioners and the owner, such valuation will be made.

(2) If the valuation so made exceeds the previous valuation, the Corporation of Calcutta shall include in the special notice provided for in section 66K(3) full details of the amount of such valuation.

Objections how made by owner.

¹66G. If the owner of any building or structure is dissatisfied with a valuation made under the provisions of section 66A to section 66F (both inclusive), he shall, within fifteen days after the receipt of the special notice referred to in sections 66F and 66K, deliver at the office of the Corporation of Calcutta a notice in writing stating the grounds of his objection.

²See foot-note 1 on page 45, *ante*.

³See foot-note 3 on page 43, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections 66H—66K.)

¹66H. (1) All such objections shall be entered in a register to be maintained for the purpose ; and, on receipt of any objection, notice shall be given to the objector of a day and place when his objection will be investigated.

Hearing of objection.

(2) On the day and place notified, the Chairman or Vice-Chairman of the Corporation shall hear the objection, and such hearing shall be in the presence of the objector, if he shall appear ; the Chairman or Vice-Chairman of the Corporation may also for reasonable cause at any time adjourn the investigation.

(3) The order passed on such objection shall be recorded in the register of objections, together with the date of such order.

¹66I. (1) The owner of such building or structure if dissatisfied with the order passed on his objection, may appeal to the Court of Small Causes having jurisdiction in the place where such building or structure is situated. Such appeal shall be presented to the Court of Small Causes within thirty days from the date of the order passed under section 66H, and shall be accompanied with an extract from the register of objections containing the order objected to.

Appeal from decision of Chairman.

(2) No appeal shall be admitted unless an objection has first been taken in accordance with the provisions of section 66G.

¹66J. The valuation by the Corporation of Calcutta, when no appeal therefrom is made, as hereinbefore provided, and the adjudication of any appeal under the last preceding section, when such appeal is made, shall be final and binding.

Valuation and adjudication to be final.

¹66K. (1) The valuation so made by the Corporation of Calcutta, subject to such alterations as may, from time to time thereafter, be duly made, shall be entered in a book, to be called the assessment-book, and to be kept at the office of the Corporation, and in the same form, as far as may be, as the rent register of the Commissioners.

Assessment, assessment-book, and special notice.

(2) A copy of such book and of all entries therein, as modified from time to time, shall be supplied to the Commissioners, and shall be open to inspection between the hours of 11 a. m. and 5 p. m. at the head office of the Commissioners.

(3) A special notice, including an extract from the assessment-book showing the valuation of each building or structure, and stating the time within which an objection shall be lodged, shall, on the completion of the valuation under sections 66A to 66F (both inclusive), be given by the Corporation to the owner of such building or structure.

¹See foot-note 1 on page 45, ante.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections 66L, 66M.)

(4) The assessment calculated on the said valuation shall, subject to such alterations as aforesaid, be deemed to be the amount payable during the whole period for which the valuation is in force ; and this period shall be calculated from the commencement of the quarter next succeeding that in which any alterations as aforesaid shall have been made ; and until such date, the old valuation shall continue in force, notwithstanding that the period for which it was made may have expired.

Amend-
ment of
ment-book.

¹66L. (1) The Corporation of Calcutta may, after giving notice to the Commissioners and the owner of such building or structure in the manner provided in section 66D, at any time amend the assessment-book, by inserting therein—

- (a) the name of any person whose name ought to be so inserted ; or
- (b) the description of any building or structure hereinbefore mentioned liable to any such rate ; or
- (c) the valuation, when such building or structure has not already been valued.

(2) The Corporation of Calcutta may, without notice, strike out the name of any person or the description of any building or structure not liable to the rate, or may reduce the amount of the valuation.

(3) All such changes shall be notified to the Commissioners, and to the owner of the building or structure in the manner provided in section 66K ; and the provisions of sections 66G, 66H, 66I, and 66J shall, so far as may be practicable, apply.

Payment
of rate
by the
Commis-
sioners to
Corpora-
tion.

¹66M. (1) The Commissioners shall, during the first month of each succeeding quarter, pay to the Corporation of Calcutta the consolidated rate so assessed for the previous quarter for such portion of the previous quarter as the Commissioners' land was occupied by each tenant and the liability for rent incurred :

Provided that, unless notice of the termination of tenancy during a quarter, has been given by the Commissioners to the Corporation of Calcutta within one month of such termination, the Commissioners shall be liable for the whole consolidated rate assessed in respect of such quarter.

(2) Before paying the consolidated rate assessed to the Corporation of Calcutta, the Commissioners shall deduct and retain a sum equal to one-eighth of such rate.

(3) For the recovery of any such sum, the Corporation of Calcutta shall have all such and the same remedies, powers, rights and authorities as they possess under the Calcutta Municipal Consolidation Act, 1888.²

Ben. Act II
of 1888.

¹ See foot-note 1 on page 45, *ante*.

² See foot-note 8 on page 43, *ante*. This reference should now be construed as a reference to West Bengal Act XXXIII of 1951.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Sections—66N—68.)

¹66N. (1) The Commissioners may recover from the owner of any such building or structure the whole of the rate so assessed, as hereinbefore stated, by the Corporation of Calcutta, in respect of any such building or structure.

Rates recoverable from owner of building or structure and tenants of land.

(2) They may further recover from the tenants of the land assessed under sections 59 to 65 (both inclusive) an amount not exceeding one-half of the whole of the consolidated rate so assessed by the Corporation of Calcutta, in respect of such portions of the land as shall have been leased to such tenants.

(3) All sums so due shall be recovered and collected by the Commissioners, together with the rent payable to them by such tenants or owners in respect of such land or any such building or structure.

(4) For the purpose of recovering such sums, the Commissioners shall have the same remedies, powers, rights and authorities as if such rates were rent recoverable by them.

67. (1) The Corporation of Calcutta, on being satisfied that any road or thoroughfare vested in the Commissioners is not less than forty feet in width, and has been duly levelled, paved, metalled, flagged, channelled and sewered, shall, at the request of the Commissioners declare such road or thoroughfare to be a "public street" as defined by the Calcutta Municipal Consolidation Act, 1888²; and thereupon the same shall become a public street and be from time to time lighted, cleansed, watered and repaired by the Corporation of Calcutta.

Power of Calcutta Corporation to declare road or thoroughfare vested in Commissioners a public street.

(2) It shall not be competent to the Corporation of Calcutta to discontinue or stop up any such road or thoroughfare, without the previous consent of the Commissioners; and the land occupied by any road or thoroughfare so discontinued or stopped shall vest in the Commissioners, and not in the Corporation of Calcutta.

Corporation not to discontinue or stop up road or thoroughfare without consent of Commissioners.

68. The Commissioners may, without parting with the control of any road or thoroughfare which is open to the public or of the road of any dock, wharf or jetty, call upon the Corporation of Calcutta, to light, cleanse, and, if necessary, water such road; and thenceforward the Corporation of Calcutta shall light, cleanse, and, if necessary, water such road:

Calcutta Corporation may be required to light, cleanse and water roads.

Provided that such road shall remain vested in the Commissioners, and shall not be stopped or discontinued, or temporarily closed, except by the Commissioners or with their consent.

¹ See foot-note 1 on page 45, ante

² See foot-note 2 on page 48, ante.

[Ben. Act III

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—Part IVA.—Disposal of Funds.—Sections 68A, 68B.)

Effect when Calcutta Municipal Act, 1923, is extended outside Calcutta.

¹68A. (1) The provisions of this Part, except sections 67 and 68, shall, notwithstanding anything contained in any other law, be applicable ²[*mutatis mutandis*] for the assessment of the properties of the Commissioners within the municipality of Howrah or within any other municipality in the neighbourhood of Calcutta or within any part thereof to which section 127 of the Calcutta Municipal Act, 1923³, has been or may be extended under section 540 of the said Act⁴ [or to which section 168 of the Calcutta Municipal Act, 1951, has been or may be extended under section 589 of that Act.]

Ben. Act III of 1923.

West Ben. Act XXXIII of 1951.

(2) In each municipality or part thereof referred to in sub-section (1) :—

- (a) for the word “Calcutta” after the words “the municipal limits of” and for the words and figures “Calcutta as defined by the Calcutta Municipal Consolidation Act 1888⁵” in section 59 and for the word “Calcutta” after the word “within” in section 65 the name of such municipality shall be read ;
- (b) for the words “the Corporation of Calcutta” in sections 60, 61, 62, 65, 66, 66B, 66C, 66D, 66E, 66F, 66G, 66J, 66K, 66L, 66M, and 66N and for the words “the Corporation” in section 66K, the words “the Commissioners of the local municipality” shall be read ;
- (c) for the words “the Chairman or Vice-Chairman of the Corporation of Calcutta” in section 63 and the words “the Chairman or Vice-Chairman of the Corporation” in section 66H the words “the authority appointed in this behalf by the Commissioners of the local municipality” shall be read ; and
- (d) for the words “the Court of Small Causes” in section 66-I the words “the Court of the Subordinate Judge” shall be read.

Ben. Act II of 1888.

*PART IVA—DISPOSAL OF FUNDS.

Application of moneys belonging to the Commissioners.

⁶68B. Subject to the provisions of section 36 of the Indian Ports Act, 1908, the moneys belonging to the Commissioners shall be applied by them in payment of the following charges, namely :—

XV of 1908.

¹Section 68A was inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1933 (Ben. Act III of 1933).

²Inserted by sec. 4 (i) of the Calcutta Port (Amendment) Act, 1954 (West Ben. Act XXV of 1954).

³Ben. Act III of 1923 has been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should be construed as a reference to the corresponding provisions of the latter Act.

⁴Added by sec. 4 (ii), of the Calcutta Port (Amendment) Act, 1954 (West Ben. Act XXV of 1954).

⁵See foot-note 3 on page 43, *ante*.

⁶Part IV-A (sec. 68B) was inserted by sec. 104 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part IVA.—Disposal of Funds.—Section 68B.)

- (1) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to the Commissioners and to the employees appointed under this Act ;
- (2) the contributions, if any, duly authorised to be made—
 - (a) to any provident fund established by the said employees, or
 - (b) to such provident fund, if any, as may be established under section 30A, or
 - (c) to such welfare fund or loan fund, if any, as may be established by the Commissioners for the benefit of such employees ;
- (3) if any such provident fund or welfare fund or loan fund be established by the Commissioners, the cost and expenses, if any, which may be incurred by the Commissioners in the conduct and administration thereof ;
- (4) the cost of repairs and maintenance of the property vested in the Commissioners and all charges upon the same and all working expenses ;
- (5) the interest due on any money that may have been raised by the Commissioners under section 18 or section 22 ;
- (6) the cost, or such portion of the cost of any new work, plant, vessel or appliance which the Commissioners may determine to charge to revenue ;
- (7) the payment of pensions, gratuities and compassionate allowances, granted by the Commissioners to their employees injured, or to surviving relatives of their employees killed, in the execution of their duty ;
- (8) the payment under clause (ii) of section 30A of bonuses to employees appointed under this Act and to the widows or dependent children or other surviving dependent relatives of such of them as may die while still in the service of the Commissioners ;
- (9) any other charge for the purposes of this Act for which the Commissioners may be legally liable :

Provided that the Commissioners shall have power and shall be deemed always to have had power at any time to apply, with the sanction of the Central Government, the moneys belonging to them in payment of any other charge not included in the foregoing clauses of this section.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part V.—Of the Estimates of Income, Expenditure and Audit.—Sections 69—72.)

PART V.—Of the Estimates of Income, Expenditure and Audit.

Estimate of income and expenditure to be laid before Commissioners at special meeting.

69. (1) The ¹[Chairman] shall, at a special meeting to be held in the month of February in each year, lay before the Commissioners an estimate of the income and of the expenditure of the Commissioners for the year commencing on the first day of April then next ensuing, in such detail and form as the ²[Central Government] shall, from time to time, direct.

Estimate when to be so laid.

(2) Such estimate shall be completed and printed, and a copy thereof sent by post or otherwise to each Commissioner at least ten clear days prior to the meeting before which the estimate is to be laid.

Commissioners in meeting to consider and sanction estimate.

70. The Commissioners in meeting shall consider the estimate as submitted to them, and shall sanction the same either unaltered or subject to such alterations as they shall think fit.

Power of Central Government to disallow estimate and return it for amendment.

71. ³(1) The estimate as sanctioned by the Commissioners shall, not later than the first day of March next following, be submitted to the ²[Central Government], who may, at any time prior to the first day of April next following, either disallow or modify such estimate, or any portion thereof, and return the same for amendment.

Estimate to be re-submitted to Central Government after amendment.

(2) The Commissioners shall, if the estimate is so returned, forthwith proceed to amend the same; and shall re-submit the estimate so amended to the ²[Central Government].

Commissioners may cause supplementary estimate to be prepared.

72. (1) The Commissioners may, at any time during the year for which any such estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to them.

¹This word was substituted for the word "Vice-Chairman" by sec. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²See foot-note 2 on page 12, *ante*.

³Sub-section (1) was substituted for the original sub-section (1) by sec. 6 of the Calcutta Port (Amendment) Act, 1928 (Ben. Act VI of 1928).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part V.—Of the Estimates of Income, Expenditure and Audit.—Sections 72A, 73.)

(2) Every such supplementary estimate shall be considered and sanctioned by the Commissioners in meeting and submitted to the ¹[Central Government] in the same manner as if it were an original annual estimate.

Supplementary estimate to be submitted to Central Government.

²72A. The Commissioners in meeting shall be at liberty, in any year, to expend, in addition to the sums sanctioned by the estimate for that year as approved by the ¹[Central Government]—

Excess expenditure by Commissioners.

(a) any sum or sums chargeable to revenue, the expenditure of which shall in their opinion be necessary and which could not reasonably have been anticipated at the time of the preparation of the estimate, if and when such sums are covered by their revenue earnings received up to the time of such expenditure ;

(b) any sum or sums on any object not included in or estimated for in the estimate, if and when such sums can be met from ascertained savings on the estimate as a whole :

Provided that in pursuance of the provisions of this clause—

(i) not more than fifty thousand rupees shall be expended on any one object, and

(ii) without the sanction of the ¹[Central Government] not more than one lakh and fifty thousand rupees shall be expended in any one year.

The Commissioners shall submit annually to the ¹[Central Government] a statement of all such expenditure, ,

³73. Subject to the provisions of section 72A, no sum exceeding twenty thousand rupees shall, except in cases of pressing emergency, be expended by, or on behalf of, the Commissioners unless such sum is included in an estimate at the time in force which has been finally approved by the ¹[Central Government].

Adherence to estimate.

¹See foot-note 2 on page 12, *ante*.

²Section 72A was inserted by sec. 7 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

³Section 73 was substituted for the former section by sec. 8, *ibid*.

(Chapter IV.—Of the General Powers of the Commission.—Part V.—Of the Estimates of Income, Expenditure and Audit.—Sections 74—75B.)

Excess expenditure to be reported to Central Government.

74. If any sum exceeding ¹[twenty thousand rupees] in amount is so expended on a pressing emergency, the circumstances shall be forthwith reported by the ²[Chairman] to the ³[Central Government] together with an explanation of the way in which it is proposed by the Commissioners to cover such extra expenditure.

Commissioners not to maintain employee without authority.

75. No ⁴[employee], as defined in section 30, may be maintained by the Commissioners, unless his salary has been provided in an estimate at the time in force.

Capital expenditure.

⁵75A. (1) No expenditure shall be charged by the Commissioners to capital without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) shall require further sanction of the Central Government in the case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Central Government unless the excess is more than ten *per cent.* of the expenditure so sanctioned.

Writing off of losses.

⁵75B. (1) Subject to such conditions as may be specified by the Central Government, where the Commissioners are of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Commissioners is irrecoverable, the Commissioners may, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss :

Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case, two thousand and five hundred rupees or in the aggregate in any one year, fifty thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Commissioners is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss, provided that such amount or loss does not exceed, in any individual case five hundred rupees or, in the aggregate in any one year, ten thousand rupees ; and in every such case, the Chairman shall make a report to the Commissioners giving reasons for such sanction.

¹These words were substituted for the words "five thousand rupees" by sec. 9 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

²This word was substituted for the word "Vice-Chairman" by sec. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

³See foot-note 2 on page 12, *ante*.

⁴See foot-note 2 on page 31, *ante*.

⁵Sections 75A and 75B were inserted by sec. 105 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part V.—Of the Estimates of Income, Expenditure and Audit.—Sections 76—78.)

¹76. (1) The accounts of the receipts and expenditure under this Act shall once in every year be laid before the Central Government and shall be audited and examined by the Comptroller and Auditor-General of India at such times and in such manner as may be determined by him.

Audit and examination of accounts.

(2) Within fourteen days after the audit and examination shall have been completed, the auditors shall report upon the accounts audited and examined, and shall forward copies of such report to the Central Government and to the Commissioners in meeting, and the Commissioners in meeting shall on receipt of such report cause the same to be deposited in the office of the Commissioners and to be published, together with an abstract of the accounts, in the *Official Gazette*.

²76A. (1) The Commissioners in meeting shall forthwith take into consideration any defects or irregularities that may be pointed out by the auditors in their report and shall pass such orders thereon as the Commissioners in meeting may think fit and shall also send a report of the action taken by the Commissioners to the Central Government.

Commissioners to remedy defects and irregularities pointed out in the audit report and Central Government to pass final orders.

(2) If there is a difference of opinion between the Commissioners and the auditors on any point included in the audit report and the Commissioners in meeting feel unable to accept the recommendations, if any, made by the auditors on such point, the matter shall forthwith be referred to the Central Government who shall pass final orders thereon and the Commissioners shall be bound to give effect to such orders.

77. [Central Government to appoint auditors.—Repealed by sec. 2 and the First Sch. of the Repealing and Amending Act, 1960 (58 of 1960)].

78. (1) For the purposes of any audit and examination of accounts under this Act, the auditors may, by summons in writing, require the production before them of all books, deeds, contracts, vouchers, and all other documents and papers which they may deem necessary ;

Auditors may require production of books, etc., for audit of accounts.

and may require any persons holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents or papers to appear before them at any such audit and examination, or adjournment thereof to make and sign a declaration with respect to the same.

¹This section was substituted for the original section by the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951), sec. 106.

²This section was inserted by sec. 107, *ibid*.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part V.—Of the Estimates of Income, Expenditure and Audit.—Part VI.—Of Landing-places and Bathing-ghats.—Sections 79—82.)

Penalty.

(2) If any such person neglect or refuse so to do, or produce any such books, deeds, contracts, accounts, vouchers, documents or papers, or to make or sign such declaration, he shall be liable for every neglect or refusal to a penalty not exceeding one hundred rupees.

Remuneration to Comptroller and Auditor-General of India.

79. ¹[The Comptroller and Auditor-General of India], shall in respect of each audit, be paid by the Commissioners such remuneration as the ²[Central Government] shall, from time to time, determine.

Accounts to be kept in office of Commissioners and to be open for inspection.

80. A copy of the accounts to be audited and examined shall be deposited in the office of the Commissioners, and thereat be open during office hours to the inspection of any person on payment of a fee of one rupee on each occasion of inspection, for seven days before the audit and examination; and all such persons shall be at liberty to take copies of, or extracts from, the same without further payment.

Submission of accounts to the Central Government.

³80A. (1) The Commissioners shall annually, or oftener, if directed by the Central Government so to do, submit statements of their receipts and disbursements to the Central Government in such form and at such time as that Government may direct.

(2) A copy of all such statements shall be open to the inspection of the public at the office of the Commissioners during office hours on payment of such fee for each inspection as may from time to time be fixed by the Commissioners in meeting.

PART VI.—Of Landing-places and Bathing-ghats.

Commissioners in meeting to provide public landing-

81. The Commissioners in meeting shall provide a sufficient number of public landing-places, from and upon which the public shall be permitted to embark and to land free of charge.

Powers with respect to bathing-ghats and landing-places.

82. It shall be lawful for the Commissioners in meeting if they consider it necessary for the purposes of this Act, to occupy or remove any bathing-ghat or landing-place within the Port; and thereafter to prohibit the public from resorting to or using the same:

Provided that the Commissioners shall reserve, set out, make and provide for the use of the public, such sufficient bathing-ghats within the Port as the ⁴[Central Government] may direct.

¹These words were substituted for the words "All auditors not being a public department, acting under this Act" by sec. 108 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²See foot-note 2 on page 12, ante.

³This section was inserted by sec. 109 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.—Sections 83—85.)

PART VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.

83. It shall not be lawful for any person or persons, save the Commissioners, to make, erect or fix below high-water-mark within the Port any wharf, quay, stage, jetty, pier, erection or mooring, unless the assent of the ¹[Central Government] shall have been first obtained.

Wharves etc., not to be erected by private persons without assent of Central Government.

84. Any matter or thing which may be so made, erected or fixed may be removed by the Commissioners :

Penalty for unlawfully erecting wharves, etc.

and the person who shall have so made, erected or fixed any such matter or thing shall be liable on conviction to a fine which may extend to one hundred rupees, and to a further fine which may extend to one thousand rupees for every day during which such matter or thing shall have been permitted to remain so made, erected or fixed after notice to remove the same shall have been given to him :

and shall also be liable to pay all expenses which may have been incurred by the Commissioners in removing such matter or thing :

Provided that this section shall not apply to moorings laid down or to be laid down by the Conservator of the Port.

85. In case any wharf, quay, stage, jetty, pier, erection or mooring may have been, or shall hereafter be, made, erected or fixed below high-water-mark without the limits for the time being of the Port, and thereafter the limits of the Port shall be extended so as to include the place on which such wharf, quay, stage, jetty, pier, erection or mooring shall have been made, erected or fixed, it shall be lawful for the Commissioners, with the sanction of the ¹[Central Government] in writing, to remove, fill up or destroy such wharf, quay, stage, jetty, pier, erection or mooring :

Power to remove wharf etc., if erected without limit of Port.

Provided that any person who may have lawfully made, erected or fixed such wharf, quay, stage, jetty, pier, erection or mooring or who may have acquired a prescriptive right thereto by possession of sixty years or upwards, his representatives or assigns shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the removal, filling up, or destruction hereinbefore mentioned.

¹ See foot-note 2 on page 12, ante.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.—Sections 86—89.)

Commissioners to provide wharves, etc., for use of public.

86. Whenever any wharves, quays, stages, jetties, piers, erections or moorings have, under the last preceding section, been removed, filled up or destroyed, the Commissioners shall make or provide for the use of the public such sufficient and convenient wharves, quays, stages, jetties, piers, erections or moorings, in the place of those that may be removed, filled up or destroyed, as the ¹[Central Government] may direct.

Commissioners to provide wharves, etc., for use of Customs Officers.

87. When the ¹[Central Government] shall, under the provisions of any Act for the regulation of duties of customs, appoint any wharf, quay, stage, jetty, or pier erected or acquired under this Act for the use of sea-going vessels, to be a wharf for the landing of goods within the meaning of such enactment,

the Commissioners shall set apart, maintain and secure on such wharf, quay, stage, jetty or pier, such portion thereof, or place therein, or adjoining thereto, for the use of the officers of Customs, as the ¹[Central Government] shall in that behalf approve or appoint.

Tolls, etc., in respect of wharves, etc., set apart for Customs Officers to be paid to Commissioners.

88. Notwithstanding that any wharf, quay, stage, jetty or pier, or portion thereof, shall, under the provisions of the last preceding section, have been set apart for the use of the officers of Customs, all tolls, dues, rates, rents or charges payable in respect thereof, or for the use thereof, or for the storage of goods thereupon shall be paid and payable to the Commissioners, or to such person or persons as they may appoint to receive the same.

Magistrate to summon masters of vessels with respect to caused to wharves, etc.

89. (1) In case any damage or mischief shall be done to any dock, wharf, quay, stage, jetty, pier or works constructed or acquired by the Commissioners under the provisions of this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employed therein,

it shall be lawful for any Magistrate, having jurisdiction in the place where such damage or mischief is alleged to have been committed, on the application of the Commissioners, to issue a summons to the master of, or agent for, such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief :

Provided that if, at the time of the damage or mischief the vessel was under the orders of a duly authorised officer belonging to the Pilot Service or the Harbour Master's or Port Officer's department, the case shall not be cognizable by the Magistrate under this section.

¹ See foot-note 2 on page 12, ante.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the Landing and Shipment of Goods.—Section 90.)

(2) If at the time appointed in the summons, and whether the person summoned shall appear or not, the Magistrate finds that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees,

Magistrate to issue warrant of distress if damage to wharves, etc., caused by negligence.

it shall be lawful for the Magistrate to issue his warrant of distress under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of, and attending the execution of, the distress and the pecuniary amount of damage as aforesaid ;

and such amount shall be paid to the Commissioners out of the proceeds of distress.

PART VIII.—Of the Landing and Shipment of Goods.

90. ¹[(1)] The Commissioners shall ²* * * provide and keep and maintain sufficient servants and apparatus for the expeditious and convenient landing and shipment of goods from and upon all sea-going vessels brought to the docks, wharves, quays, stages, jetties or piers erected by them ;

Commissioners to provide for landing, etc., goods from sea-going vessels.

and shall, by their servants ³[or agents], land and ship all goods from and upon any such vessels so coming to such dock, wharf, quay, stage, jetty or pier, unless where there is a legal excuse for refusing to land or ship such goods, or such vessel is by reason of the breach or non-observance of any law or regulation, not entitled to have her goods shipped or discharged :

⁴[Provided that, in the case of cargoes of petroleum, it shall be lawful for the Commissioners not only to land the petroleum from all sea-going vessels, but also by their servants or agents to put the petroleum out of the hold and oversee such vessels] :

Provided ⁵[further] that the Commissioners shall not be bound to land, ship or move any single article or package exceeding thirty tons of twenty hundredweight in weight except at such special charge as may be agreed on in respect of such article or package :

⁶[Provided also that it shall be lawful for the Commissioners in meeting in special cases to permit goods to be landed from, or shipped upon, any such sea-going vessel by persons other than the employees or agents of the Commissioners].

¹Section 90 was re-numbered as sub-section (1) of that section by sec. 110 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²The words "when thereunto required by the Local Government" were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V. of 1915).

³These words were inserted by sec. 5 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895).

⁴This proviso was inserted by sec. 5, *ibid.*

⁵This word was inserted by sec. 5, *ibid.*

⁶This proviso was inserted by sec. 110 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV. of 1951):

(Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the landing and Shipment of Goods.—Sections 91—93.)

¹(2) The Commissioners may also maintain and use lighters for the purpose of landing and shipment of goods between sea-going vessels at the port and the docks, wharves, quays, stages, jetties or piers erected by them.

Commissioners to grant receipts for goods landed by them.

Liability for loss, etc., of goods to cease when once landed.

Commissioners to declare when docks, etc., are ready for landing goods from sea-going vessels.

Commissioners may order sea-going vessels to load or unload at docks, etc., when accommodation available.

91. (1) Whenever any goods shall be landed by the Commissioners from any vessel under the powers by this Act conferred on them, they shall if thereunto required, give to the person in charge of such vessel a receipt in the form or to the effect prescribed in the ²[Second] Schedule; and may, in any such receipt, include all goods landed from such vessel during one day.

(2) No person to whom such receipt shall have been so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt shall be given may have been landed, shall be liable for any loss or damage to such goods which may occur after they shall have been so landed.

92. When any dock, wharf, quay, stage, jetty or pier, erected under the provisions of this Act, shall have been made and completed, together with sufficient warehouses, sheds, cranes, and moorings for landing and shipment, or for landing or for shipment of goods from and upon sea-going vessels,

it shall be lawful for the Commissioners * * * by a notification published in three consecutive numbers of the ⁴[Official Gazette] to declare that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipment, or for landing or for shipment of goods from and upon sea-going vessels.

93. From and after such notification and publication, it shall be lawful for the Commissioners * * * from time to time, when there shall be room at such dock, wharf, quay, stage, jetty or pier, to order to come alongside of such dock, wharf, quay, stage, jetty or pier for the purpose of being laden or unladen by the Commissioners, any sea-going vessel which shall not have commenced to discharge goods, or which, being about to take in goods, shall not have commenced to take in goods :

⁶[Provided that if the Commissioners are not the Conservator of the Port, they shall not themselves make the order as aforesaid but shall require the Conservator of the Port, or other person exercising the rights, powers and authorities of the Conservator of the Port, to make such order.]

¹This sub-section (2) was inserted by sec. 110 (b) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This word was substituted for the word "Third" by sec. 7 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

³The words "with the sanction of the Local Government" were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁴See foot-note 3 on page 12, *ante*.

⁵The words "to require the Conservator of the Port or other persons exercising the rights, powers and authorities of the Conservator of the Port" were omitted by sec. 111(a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶This proviso was added by sec. 111(b), *ibid*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the Landing and shipment of Goods.—Sections 94—97.)

94. If, after such order of the ¹[Commissioners or as the case may be, the Conservator of the Port] or other person aforesaid the owner or master of any such ²[vessel] shall either take in or discharge goods, save and except at such dock, wharf, quay, stage, jetty or pier to which such vessel shall have been so ordered,

Penalty for landing or shipping goods in contravention of order.

the owner thereof, or, in case he shall not be in Calcutta, the master thereof, shall be liable to a penalty of one hundred rupees for each day that he shall land or ship, or attempt to land or ship, any goods in contravention of such order.

³95. Without the express sanction of the Commissioners in meeting and except in accordance with the conditions which the Commissioners in meeting may by resolution prescribe, no goods shall be landed or shipped from or upon any sea-going vessel within the port save at the docks, wharves, quays, stages, jetties or piers erected under this Act.

Power to direct goods not to be landed from or shipped upon sea-going vessels save at docks, etc., erected by Commissioners.

96. Whoever shall, after such order has been so published as aforesaid, land or ship, or attempt to land or ship, any goods in contravention of such order, shall be liable to a fine not exceeding two hundred rupees for every day that he shall so land or ship any goods in contravention of the said order :

Penalty for landing or shipping goods after publication of order.

Provided that, notwithstanding anything in this or in sections 92, 93 and 94 contained, it shall be lawful for the ⁴[Central Government] by notification in the ⁵[Official Gazette], from time to time, if it shall so think fit, to declare that certain specified vessels or classes of vessels shall be permitted to discharge or ship goods or that certain specified goods or classes of goods shall be permitted to be landed or shipped elsewhere, and at such part of the Port of Calcutta and for such time and on such conditions as it may think fit.

97. (1) When any dock, wharf, quay, stage, jetty or pier for receiving, landing or shipment of goods from vessels (not being sea-going vessels) shall have been made and completed with all proper appliances in that behalf,

Commissioners to declare when docks, etc., are ready for landing goods from inland vessels.

¹These words were substituted for the words "Conservator of the Port" by sec. 112 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²This word was substituted for the word "vessels" by sec. 3 and Sch. II of the Amending Act, 1903 (I of 1903).

³This section was substituted for the original section by sec. 113 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴See foot-note 2 on page 10, ante.

⁵See foot-note 3 on page 10, ante.

(Chapter IV.—Of the General Powers of the Commission.—
Part VIII.—Of the Landing and Shipment of Goods.—
Sections 98, 99.)

it shall be lawful for the Commissioners in meeting ^{1*} *
* * * by an order published in three consecutive numbers of the ²[Official Gazette], to declare that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipment of goods from vessels (not being sea-going vessels),

and in the same way ³[with the sanction of the 'Central Government'] to order that, within certain prescribed limits to be therein specified in that behalf, it shall not be lawful, without the express sanction of the Commissioner, to land or ship any goods out of, or into, any vessel (not being a sea-going vessel) of any class specified in such order, except at such dock, wharf, quay, stage, jetty or pier.

(2) And, by an order in like manner published, to alter, vary or revoke any such order.

Suit may be instituted for award of compensation.

98. Whenever any order made and published under sections 95 and 97 shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any vessel at any wharf, quay, stage, jetty or pier lawfully made, erected or fixed by any person for the convenience of private traffic, or to which a prescriptive right may have been acquired by possession of sixty years or upwards,

such person, his representatives or assigns, shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the order hereinbefore mentioned :

Provided that, in awarding such compensation, the Court shall not take into consideration any tolls, dues, rates or charges which the aforesaid person claiming compensation shall be liable to pay for using the wharf, quay, stage, jetty or pier provided by the Commissioners for public use :

Provided also that it shall be lawful for the Commissioner, in lieu of closing any wharf, quay, stage, jetty or pier under either of the said sections, to allow the continued use thereof on payment of such scale of tolls, dues, rates and charges as may be agreed upon between the owners thereof and the Commissioners.

Goods not to be landed from inland vessels save at docks, etc.

99. (1) After the publication of the order mentioned in section 97 of this Act, it shall not be lawful for any vessel of such class to land or ship any goods at any place within the limits so specified except at such dock, wharf, quay, stage, jetty or pier ; nor for any such vessel, while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark without the consent of the Commissioners.

¹The words "with the sanction of the Local Government" were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²See foot-note 8 on page 12, ante.

³These words were substituted for the words "and with the same sanction" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁴See foot-note 2 on page 12, ante.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part VIII.—Of the Landing and Shipment of Goods.—Part
IX.—Of Levying Tolls and Rates.—Sections 100—104.)

(2) Any person guilty of any breach of the provisions of this section shall be liable to a fine not exceeding fifty rupees for every such breach.

Penalty for breach of provisions.

100. If, after the publication of the order mentioned in section 97 of this Act, any such vessels shall, within such limits, so anchor, fasten or lie, it shall be lawful for the Commissioners to cause the same to be removed out of the said limits; and it shall be the duty of the Conservator of the Port to aid and assist the Commissioners in so removing such vessel.

Power to remove vessels lying within fifty yards of low-water-mark.

101. The Commissioners may, by notice in writing, order the master, owner or agent of any vessel to remove such vessel from any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners.

Commissioners may require masters to remove vessels from docks, etc.

102. Unless such vessel shall be removed therefrom within thirty-six hours after service of such notice on the officer in charge of such vessel, or the master, owner or agent thereof,

Power to charge

it shall be lawful for the Commissioners to charge, in respect of such vessel for the use by such vessel of such dock, wharf, quay, stage, jetty or pier, such sum not exceeding five hundred rupees for each day of twenty-four hours, or portion of such day, after the expiry of such thirty-six hours, during which such vessel shall remain at such dock, wharf, quay, stage, jetty or pier as to the Commissioners shall seem fit.

for use of docks, etc., after service of notice for their removal.

PART IX.—Of Levying Tolls and Rates.

103. The Commissioners shall frame a scale of tolls, dues, rates and charges for the landing and shipment of goods from and into sea-going vessels at the docks, wharves, quays, stages, jetties and piers belonging to the Commissioners, and for the use thereof by such vessels, and for the storing and keeping of any goods stored in any premises belonging to them, and for the removal of goods, and for the use of any moorings laid down or acquired by the Commissioners, and for the towage of vessels by the steam-vessels of the Commissioners in the Port.

Commissioners to frame scale of tolls etc., for landing goods from sea-going vessels.

104. The Commissioners shall also frame a scale of tolls, dues, rates and charges for the landing and shipment of goods into and out of any vessel (not being a sea-going vessel);

Commissioners to frame scale of tolls, etc., for landing goods into inland vessels.

1* * * *

¹In sec. 104 the words "and also a scale of tolls for the use of the said docks, wharves, quays, stages, jetties and piers by any such vessel, in case the Commissioners shall permit the goods to be landed or shipped by other than their own officers and servants" were repealed by sec. 6 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 104A—106.)

Commissioners to frame scales of tolls for use of docks, etc., by vessels.

¹104A. (1) The Commissioners shall also frame scales of tolls for the use of their docks, wharves, quays, stages, jetties and piers by vessels, whether sea-going or not, leviable when the Commissioners permit goods to be landed or shipped by persons other than their own ²[employees].

(2) The scales for sea-going vessels and vessels other than sea-going vessels may be either the same or different, as the Commissioners may think fit.

Commissioners to frame scale of charges for services in respect of vessel or goods, etc.

³105. The Commissioners shall also frame a scale of charges for any services to be performed by the Commissioners or their ⁴[employees] in respect of ⁵[vessels or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act, 1908], or for the use of any works or appliances to be provided by the Commissioners.

XV of 1908.

Charges for carrying passengers and their personal effects on Commissioners' vessels.

⁶105A. The Commissioners shall also frame a scale of charges for the carrying of passengers and their personal effects on vessels belonging to or hired by the Commissioners.

Commissioners to frame scale of tolls, rates, charges and fees in respect of

106. The Commissioners shall also frame a scale of tolls, ⁷[rates, charges, and fees], annual or other, to be paid by the owners of ⁸* vessels plying ⁹[whether for hire or not, and] whether regularly or occasionally within, or partly within and partly without, the limits of the port ¹⁰[in respect of such vessels and of persons whether in charge of, or on board, such vessels, and also in respect of the licensing, registration and regulation of such vessels and persons] :

plying within limits of port and in respect of persons thereon.

Provided that no such tolls, ⁷[rates, charges and fees] shall be chargeable in respect of vessels which are liable to pay port dues under the provisions of Schedule I of the Indian Ports Act, 1889.¹¹

X of 1889.

¹Section 104A was inserted by sec. 7 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895).

²See foot-note 1 on page 31, *ante*.

³Section 105 was substituted for the original section by sec. 4 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

⁴This word was substituted for the word "servants" by sec. 83 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁵These words were substituted for the words "any vessel or goods" by sec. 114, *ibid*.

⁶Section 105A was inserted by sec. 5 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

⁷These words were inserted by sec. 8 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁸The word "any" was repealed, *ibid*.

⁹These words were substituted for the words "for hire" by sec. 6 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

¹⁰These words were inserted by sec. 8 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

¹¹Act X of 1889 was repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 107, 108.)

107. (1) Such scales of tolls, dues, rates and charges shall be adopted by the Commissioners in meeting, and shall be submitted to the ¹[Central Government]; and after receiving its approval shall be published by the Commissioners in the ²[*Official Gazette*], and may from time to time, subject to the like approval and publication, be in like manner altered.

³[(1a) In framing scales under the foregoing provisions, the Commissioners in meeting may prescribe a lower rate of charges in respect of cargo carried in a vessel from one Indian port to another.

Explanation.—For the purposes of this section, the expression, “Indian port” includes the ports of Diu, Daman, Margao, Panjim, Mahe, Karaikal and Pondicherry.]

(2) It shall also be competent to the ¹[Central Government] at any time to cancel any of the scales framed under sections 103 to 106 (both inclusive), or to call upon the Commissioners to modify any portion of such scales; and thereupon the Commissioners in meeting shall modify such scales accordingly.

108. ⁴[The Commissioners may from time to time] charge upon all ⁵[or any portion or description of] goods landed from or shipped into any ⁶[sea-going] vessel lying or being within the limits of the port ⁷[or of the port approaches], whether such goods shall or shall not be so landed or shipped at any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners,

such ⁸[general or differential] tolls, dues, rates and charges, in addition to, or other than, those prescribed by any scale of tolls, dues, rates and charges for the time being in force under the provisions of section 103, ⁹[104A] ¹⁰[and] 107 ¹¹* * ¹²[as the Commissioners may think fit and expedient]:

¹³[Provided that the said goods may, for the purpose of this section, be classified by weight, measurement, number and value,

Scale of tolls, etc., to be published after approval by Central Government.

Power to levy concessional rate of charges on coastal cargo.

Power of Central Government to cancel scale of tolls, etc.

Power of Commissioners to charge additional general or differential tolls, etc., on all or any portion or description of goods, to provide for payment of debt.

¹See foot-note 2 on page 12, *ante*.

²See foot-note 3 on page 12, *ante*.

³Sub-section (1a) was inserted by sec. 115 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁴These words were substituted for the original words by sec. 8(1) of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁵These words were inserted by sec. 9 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁶This word was inserted, *ibid*.

⁷These words were inserted by sec. 116 (a) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁸These words were inserted by sec. 9 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁹This reference to sec. 104A was inserted, *ibid*.

¹⁰This word was substituted for the word “to”, *ibid*.

¹¹The words “(both inclusive)” were repealed, *ibid*.

¹²These words were substituted for the words “as will, when added to the said income of the year, suffice as nearly as may be for the payment of the said sums in full” by sec. 8(2) of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

¹³This proviso was added by sec. 9 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 109—111.)

and the tolls, dues, rates and charges leviable may be varied according as the goods are imported or exported goods]
¹[or, according as the goods are landed or shipped within the limits of the port or of the port approaches.]

Mode of
levy and
recovery
of addi-
tional
general or
differential
tolls, etc.

109. Such ²[additional general or differential] tolls, dues, rates and charges shall be fixed and adopted in accordance with a resolution passed by the Commissioners at a meeting, and shall be submitted to the ³[Central Government]; and if the same shall be approved by it, it shall be published in the ⁴[*Official Gazette*], and shall forthwith come into operation and remain in operation until altered or revoked by the Commissioners in meeting, with the sanction of the ⁵[Central Government]; and shall be leviable and recoverable in like manner as any other tolls, dues, rates and charges payable under this Act.

Power of
Commis-
sioners to
remit tolls,
etc.

⁵109A. The Commissioners in meeting may, in special cases, for reasons to be recorded in writing, remit the whole or any portion of the tolls, dues, rates or charges leviable according to any scale for the time being in force under section 107 or section 109.

110. [*Power of Local Government to charge tolls, etc., on neglect of Commissioners to do so.*—Rep. by sec. 9 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

Recovery
of tolls
in arrear.

111. (1) For the amount of all tolls, dues, rates and charges duly leviable under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, dues, rates and charges are fully paid.

(2) Toll, dues, rates and charges in respect of goods to be landed shall become payable immediately on the landing of the goods.

(3) Toll, dues, rates and charges in respect of goods to be removed from the premises of the Commissioners or to be shipped for export, shall be payable before the goods are removed or shipped.

(4) The lien for such tolls, dues, rates and charges shall have priority over all other liens and claims, except for general average, for the ship-owners' lien for freight upon the said goods where such lien exists and has been preserved in the manner hereinafter provided, for primage, and for money payable to ⁶[the Government] under any law for the time being in force :

¹These words were added to the proviso by sec. 116 (b) of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

²These words were inserted by sec. 10 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

³See foot-note 2 on page 12, ante.

⁴See foot-note 3 on page 12, ante.

⁵This section was inserted by sec. 117 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

⁶The words "the Crown" were originally substituted for the words "Her Majesty or the Secretary of State for India in Council" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 112, 113.)

Provided that nothing in this Act shall affect any power or authority vested in the Chief Officer of Customs under any law for the time being in force.

¹112. (1) The responsibility of the Commissioners for the loss, destruction or deterioration of animals or goods, whether landed for import or received for export or for carriage by railway,

Responsibility of Commissioners for loss, destruction or deterioration of animals or goods.

during such time as the same remain in the possession or under the control of the Commissioners,

shall, subject to the other provisions of this Act, and, in the case of animals or goods received for carriage by railway, subject also to the provisions of the Indian Railways Act, 1890, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of the last-mentioned Act.

IX of 1890.
IX of 1872.

(2) With the previous sanction of the ²[Central Government] and under such circumstances and conditions as the ³[Central Government] may prescribe, the Commissioners may enter into an agreement relating to animals or goods landed for import or received for export or for carriage by railway, which may impose upon the Commissioners a greater responsibility than that imposed by sub-section (1).

(3) Every such agreement must be in writing and must be signed by, or on behalf of, the Commissioners.

113. (1) The Commissioners shall, immediately upon the landing ⁴[by them] of any goods, take charge thereof, and store such as are liable to suffer from exposure in any shed or warehouse belonging to the Commissioners.

Commissioners to take charge of goods landed by them.

(2) If any owner, without any default on the part of the Commissioners, fail to remove any goods ⁴[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878], from the premises of the Commissioners within ⁵[five] clear working days from the time of landing, such goods shall remain on the premises at the sole risk and expense of the owner.

VIII of
1878.

Goods not stored in licensed warehouses to remain at risk and expense of owner if not removed within five days.

¹Section 112 was substituted for the original section by sec. 2 of the Calcutta Port (Amendment) Act, 1898 (Ben. Act II of 1898).

²See foot-note 2 on page 12, *ante*.

³These words were inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1894 (Ben. Act II of 1894).

⁴These words were inserted by secs. 11, 12 and 18 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁵This word was substituted for the word "three" by sec. 118 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

[Ben. Act III]

*(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 114—117.)*

VIII of
1878.

Commissioners to give notice to consignee, etc., of cessation of liability.

114. (1) Whenever the owner of any goods ¹[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878,] fails to remove the same within the time specified in the last preceding section, the Commissioners shall give notice to the consignee or owner of such goods, if his address be known, by letter sent by post to such address or left thereat, that all liability which the Commissioners may have hitherto incurred in respect of such goods has ceased ;

Also to publish notice of expiry of such liability.

(2) and shall also publish in one or more daily newspapers notice of the expiry of such liability ; and shall specify therein the numbers, marks and descriptions of such goods, so far as the same may appear.

Liability of consignee or owner with respect to goods stored in public warehouses.

115. In case the said goods ¹[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878,] shall be removed to the public warehouses, then the consignee or owner shall be liable to the charges for warehousing goods in such public warehouses ; and goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and to the power of sale hereinafter given.

Lien for freight preserved after landing of goods, if notice of lien be given.

116. (1) If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel and goods at any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners shall give to the Commissioners notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods, shall continue liable to the same lien (if any) for such charges as they were subject to before the landing thereof.

Goods to be retained in warehouses and sheds until discharge of lien.

(2) Such good shall be retained either in the warehouses and sheds of the Commissioners or in warehouses licensed under section 16 of the Sea Customs Act, 1878, or with the consent of the Chief Officer of Customs, in the public warehouses at the risk and expense of the owners of the goods, until the lien is discharged as hereinafter mentioned.

Commissioners may permit goods to be removed without regard to lien.

117. Upon the production to the ²[employee] of the Commissioners in that behalf of a document purporting to be a receipt for the amount claimed as due, or a release of freight, from the person by or on whose behalf such notice shall have been given, it shall be lawful for the Commissioners to permit such goods to be removed without regard to such lien :

Provided they shall have used reasonable care in respect to the authenticity of such document.

¹See foot-note 4 on page 67, *ante*.

²Section 116 was substituted for the former section by sec. 5 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

³This word was substituted for the word "officer" by sec. 83 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 118—119A.)

118. If the tolls, dues, rates and charges payable to the Commissioners in respect of any goods under this Act are not paid,

Power of Commissioners to sell goods by public auction.

or if the lien of the shipowner for freight, where such notice as aforesaid has been given, is not discharged,

the Commissioners may, and, in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of two months from the time when the goods were placed in their custody, or, if the goods are of a perishable nature, at such earlier period, being not less than twenty-four hours after the landing of the goods as they shall think fit,

sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

119. (1) Before making such sale, ten days' notice of the same shall be given by publication thereof in the ¹[Calcutta Gazette],

Notice to be given before sale of goods.

unless the goods are of so perishable a nature as, in the opinion of the ²[employee] of the Commissioners in that behalf, to render immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

(2) If the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post ;

Notice to be given to owner by letter if address be known.

but the title of a *bonafide* purchaser of such goods shall not be invalidated by reason of the omission to send the notice herebefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

³119A. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Commissioners upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Commissioners within one month from the date on which such goods were placed in their custody, the Commissioners may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be served upon him or his address is not known, cause a notice to be published in the *Official Gazette* and also in at least one of the principal local daily

Disposal of goods not removed from the premises of the Commissioners within time limited.

¹This expression shall stand unmodified. *Vide* para. 8 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "officer" by sec. 83 of the Port Trusts and Ports Amendment Act, 1951 (XXXV of 1951), as amended by Act XLV of 1952.

³This section was inserted by sec. 119 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

[Ben. Act III]

*(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 120, 121.)*

newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction :

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Commissioners.

(2) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Commissioners may, at any time after the expiration of one month from the date on which the notice was so served or published, sell the goods by public auction after giving notice of the sale in the manner prescribed in section 119.

(3) The Central Government may, by notification in the *Official Gazette*, exempt any goods or class of goods from the operation of this section.

Application
of proceeds
of sale.

120. (1) ¹[In the case of any sale under section 118 or section 119A], the moneys received from the sale shall be applied as follows :—

- (a) in payment of the expenses of the sale ;
- (b) in payment, according to their respective priorities, of the liens and claims excepted in section 111 from the priority of the liens of the Commissioners for tolls, rates and dues ; and
- (c) in payment of the tolls, charges and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Commissioners under this Act in respect thereof.

Surplus of
sale-pro-
ceeds to
whom to
be paid.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods, or to his agent, on his applying for the same :

Provided that such application be made within one year from the sale of the goods, or good reason be shown why such application was not so made to the satisfaction of the Commissioners ; and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act.

Power of
Collector of
Customs to
distrain
vessels
for non-
payment
of tolls.

121. If the master of any vessel in respect of which any tolls, dues, rates, penalties or charges shall be payable under this Act, or any rules or orders made in pursuance thereof, shall refuse or neglect to pay the same or any part thereof on demand, it shall be lawful for the Commissioners to apply to the Collector of Customs of the Port of Calcutta ;

¹These words and figures within square brackets were substituted for the words "In every case of any such sale as aforesaid" by the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951), sec. 120.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Sections 122—122B.)

and such Collector shall distrain or arrest of his own authority such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners shall be paid ;

and in case any part of the said tolls, dues, rates, penalties or charges, or of the cost of the distress or arrestment, or of the keeping of the same, shall remain unpaid for the space of five days next after any such distress or arrestment shall have been so made, the Collector of Customs may cause the vessel or other things so distrained or arrested to be sold,

and with the proceeds of such sale may satisfy such tolls, dues, rates, penalties or charges, and costs, including the costs of sale remaining unpaid ; rendering the surplus (if any) to the master of such vessel on demand.

122. If the Commissioners shall give to the ¹[officer of the Government], whose duty it shall be to grant the port clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates or charges, or penalties chargeable under this Act or any bye-laws, rules or orders made in pursuance thereof, against such vessel, or the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel,

Port clearance not to be granted until tolls, etc., are paid.

such officer shall not grant such port clearance until the amount so chargeable shall have been paid.

²122A. (1) All warehouses of the Port Commissioners shall be deemed to be private warehouses and capable of being licensed as such under section 16 of the Sea Customs Act, 1878 ; and all the provisions of that Act relating to licensed private warehouses shall be applicable to all such warehouses.

Warehouses, may be made bonded warehouses, and warrants may be granted.

(2) The warrants delivered under section 96 of the Sea Customs Act, 1878, shall, in the case of the said warehouses, be signed by the Commissioner or some person duly authorized by them in that behalf.

³122B. It shall be lawful for the Commissioners to give, in the manner provided by section 53, general security, by bond or otherwise, for payment of the import duty due on goods stored in bonded warehouses, or for the due exportation of such goods. When such security shall have been given by the Commissioners, no further security shall be required by the Chief Customs Authority from any other person to the same effect.

Commissioners may give security for duty on bonded goods.

¹The words "officer of the Crown" were originally substituted for the words "officer of Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²Sections 122A, 122B and 122C were inserted by sec. 15 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part IX.—Of Levying Tolls and Rates.—Chapter V.—Of the Powers of the Commissioners as Conservators of the Port.—Sections 122C—124.)

Commissioners may store goods in bonded ware-houses.

¹122C. The Commissioners shall not be liable to compensate the owners of petroleum stored in any warehouse licensed under section 16 of the Sea Customs Act, 1878, for any loss by fire, however arising, or for any direction or damage or diminution in quantity by leakage or otherwise, unless such direction, damage or diminution has been caused by the negligence of the Commissioners or their servants.

VIII of 1878.

Alternative remedy by suit.

²122D. Notwithstanding anything contained in section 111 and in sections 116 to 122 (both inclusive), the Commissioners may recover by suit any tolls, dues, rates, rents, charges, damages, expenses, costs or in case of sale, the balance thereof when the proceeds of sale are insufficient, or any penalties or fines payable to, or recoverable by, the Commissioners under this Act or under any bye-laws made in pursuance thereof.

CHAPTER V.

OF THE POWERS OF THE COMMISSIONERS AS CONSERVATORS OF THE PORT.

Moneys received by the Commissioners as Conservator of Port or as body appointed under section 36 of the Indian Ports Act, 1908.

³123. (1) All moneys received by the Commissioners as the Conservator of the Port and of the Port approaches, or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act, 1908, excluding all fees and all fines and penalties creditable to the pilotage account of the port under sub-section (5a) of that section shall be deemed to be a portion of the income of the Commissioners and shall be included in their annual estimates and accounts.

XV of 1908.

Powers etc., of the Commissioners as Conservator of Port or as body appointed under section 36 of the Indian Ports Act, 1908.

(2) All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorised shall apply to the works which may be executed by the Commissioners as such Conservator or body, not being the works the cost of which is chargeable to the pilotage account of the port under sub-section (5b) of section 36 of the Indian Ports Act, 1908, and also to the sanction of such works, the estimates therefor and the expenditure thereunder.

124. [Port dues, etc., received by Commissioners as Conservators to be included in debt to Government.—Rep. by sec. 123 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).]

¹ See foot-note 2 on page 71, ante.

² This section was inserted by sec. 121 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³ This section was substituted for the original section by sec. 122, *ibid.*

of 1890.]

(Chapter VI.—Of Wrecks.—Chapter VII.—Of Bye-Laws.—
Sections 125, 126.)

CHAPTER VI.

OF WRECKS.

VII of
1890.

125. The Commissioners shall, if and when appointed under the provisions of section 73¹ of the Indian Merchant Shipping Act, 1880, to be Receivers of Wreck within the limits of their jurisdiction, exercise within such limits all the functions of a Receiver of Wreck under the said Act.

Commissioners to exercise functions of Receiver of Wreck.

CHAPTER VII.

OF BYE-LAWS.

X of 1889.

126. (1) It shall be lawful for the Commissioners in meeting, from time to time, to make such bye-laws consistent with this Act and with the Indian Ports Act, 1889², as they may think necessary for any of the following purposes (that is to say) :—

Power to make, alter or repeal bye-laws.

- (a) for regulating, declaring and defining the docks, wharves, quays, stages, jetties and piers on and from which goods shall be landed from, and shipped in, vessels within the port ;
- (b) for regulating the manner in which, and the conditions under which, the loading and discharging of all vessels within the port shall be carried out ;
- (c) for the safe and convenient use of such docks, wharves, quays, stages, jetties and piers, and of landing-places, “[shelters for passengers], warehouses, warehouses licensed under section 16 of the Sea Customs Act, 1878, sheds and other works in and adjoining the same ;
- (d) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to be so damaged ;
- (e) for the mode of payment of tolls, dues, rates and charges levied under this Act ;

VIII of
1878.

¹Act VII of 1880 was repealed and re-enacted by the Indian Merchant Shipping Act, 1923 (XXI of 1923). Act XXI of 1923 was again repealed and re-enacted by Act XLIV of 1958 and this reference should now be construed as a reference to sec. 391 of the last mentioned Act.

²Section 126 was substituted for the former section by sec. 6 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

³Act X of 1889 was repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

⁴These words were inserted by sec. 2 of the Calcutta Port (Amendment) Act, 1926 (Ben. Act I of 1926).

[Ben. Act III]

(Chapter VII.—Of Bye-Laws.—Chapter VIII.—Of the Constitution and Control of Port Police Force.—Sections 127—129.)

- (f) for the removal of wrecks from the port or the river, and keeping clean the port, the river, the bank of the river, and the works of the Commissioners, and for preventing filth and rubbish being thrown therein or thereon ;
- (g) for regulating the hours during which European seamen and apprentices shipped on the same footing as European seamen may be employed on board ships lying in the port, or on docks, wharves, quays, stages, jetties and piers, in work necessitating exposure to the sun ;
- (h) for the guidance of persons employed by them under this Act ; and
- (i) for otherwise carrying out the purposes of this Act.

(2) The Commissioners in meeting may, from time to time, repeal, alter, or add to any bye-law made under this section.

(3) No bye-law, repeal or alteration of any bye-law shall have effect until the same is confirmed by the ¹[Central Government].

(4) No bye-law and no repeal or alteration of, or addition to, any bye-law, shall be confirmed until the same has been published ²[for two weeks successively in the *Official Gazette* and until fourteen days have expired from the date on which the same had been first published in that *Gazette*].

Penalty for infringement of bye-laws.

127. In making any bye-law under the last preceding section, the Commissioners in meeting may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to two hundred rupees for every day after the first during which the breach continues.

Bye-laws and tables of tolls, etc., to be printed and hung up at docks, etc.

128. The Commissioners shall cause the said bye-laws, and the tables of tolls, dues, rates and charges leviable, to be printed in the English and Bengali languages and characters, and to be hung up at the several docks, wharves, quays and jetties, and other convenient places on the premises of the Commissioners.

CHAPTER VIII.

OF THE CONSTITUTION AND CONTROL OF PORT POLICE FORCE.

Constitution of Port Police Force.

129. A Police Force shall be formally enrolled for the Port of Calcutta, to be styled the "Port Police Force," and shall consist of a special Superintendent to be called the "Superintendent of Port Police," and such number of officers and men as the ¹[Central Government] shall, from time to time, direct.

¹See foot-note 2 on page 12, *ante*.

²These words were substituted for the words "in three consecutive numbers of the *Official Gazette*" by sec. 124 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

of 1890.]

(Chapter VIII.—Of the Constitution and Control of Port Police Force.—Chapter IX.—Of the Port Police Budget.—Sections 130—134.)

Ben. Act
IV of 1866.

130. The Port Police Force shall be under the direction and control of the Commissioner of Police for Calcutta, and shall form a portion of the Police Force of Calcutta, and shall be subject to the provisions of the Calcutta Police Act, 1866.

Port Police Force to be under control of Commissioner of Police.

131. The Superintendent of Port Police shall, in all matters connected with the prevention of crime, and the detection, apprehension and detection of offenders in order to their being brought before a Magistrate, and the preservation of the public peace, act under the direct control of the Commissioner of Police for Calcutta.

Superintendent of Port Police to act under control of Commissioner of Police.

X of 1889.

132. The Superintendent of Port Police shall submit daily reports to the Commissioners of all offences (if any) committed contrary to the provisions of this Act, or of the Indian Ports Act, 1889¹, or of any Port rules and by-laws in force prescribed in accordance therewith, and of all accidents occurring on the river within the limits of the Port.

Superintendent of Port Police to submit daily reports of offences.

CHAPTER IX.

OF THE PORT POLICE BUDGET.

133. (1) The Commissioner of Police, on or before the first day of January in each year, shall transmit to the Commissioners a budget or estimate of the expenses of the Port Police Force for the financial year commencing on the first day of April then next ensuing.

Commissioner of Police to submit budget or estimate of Port Police Force to Commissioners.

(2) The Police Budget shall show the various heads of expenditure of the Police Force.

134. (1) The Chairman shall lay every such budget before the Commissioners at the first meeting of the Commissioners held after such budget has been transferred.

Budget when to be laid before Commissioners.

(2) The Commissioners shall thereupon forward such budget to the ²[Central Government], with such remarks as to them may seem fit ; and it shall be in the ³[power] of the ²[Central Government] to pass, or to reject, or to modify, all or any sums entered in the same ⁴[as it thinks fit.]

Budget to be submitted to Central Government.

¹Act X of 1889 was repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

²See foot-note 2 on page 12, *ante*.

³This word was substituted for the word "discretion" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were inserted, *ibid*.

(Chapter X.—Miscellaneous.—Sections 134A—136.)

Amount of estimates passed to be paid to officer appointed by Central Government.

(3) The amount of the estimates passed, or such proportion of the same as shall be fixed upon by the ¹[Central Government], shall be paid to such officer as the ¹[Central Government] may from time to time direct, by the Commissioners.

CHAPTER X.

MISCELLANEOUS.

Supply of reports, returns, etc., to the Central Government.

²134A. The Chairman shall furnish to the Central Government such reports, returns, documents or other information relating to the work of the Commissioners under this Act as may, from time to time, be called for by the Central Government.

Annual administration report of the Port.

²134B. As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Central Government, the Commissioners shall submit to the Central Government a detailed report of the administration of the Port during the preceding year ending on the thirty-first day of March in such form as the Central Government may direct.

Indemnity to Commissioners against default of employees, etc.

135. The Commissioners shall not be answerable for any act or default of any Conservator or Harbour Master of the Port, or of any Deputy or Assistant of the said ³[employees], or of any person acting under the authority or directions of any such ⁴[employee] or assistant, heretofore or hereafter done within the limits of the Port ;

nor for any damage or injury heretofore or hereafter sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other thing belonging to the Commissioners within the Port which may be used by such vessel :

Provided that nothing in this section shall protect the said Commissioners from an action in respect of any act done by, or under the express order or sanction of the said Commissioners.

Persons employed under this Act to be public servants for certain purposes.

⁵136. Every person employed under this Act shall, for the purposes of sections 161 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1947, be deemed to be a public servant within the meaning of section 21 of the said Code.

Act XLV
of 1860.
II of 1947.

¹ See foot-note 2 on page 12, *ante*.

² Sections 134A and 134B were inserted by sec. 125 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

³ This word was substituted for the word "officers" by sec. 83, *ibid*.

⁴ This word was substituted for the word "officer", *ibid*.

⁵ Sections 136 and 136A were substituted for sec. 136 by sec. 126, *ibid*.

of 1890.]

(Chapter X.—Miscellaneous.—Sections 136A, 137.)

¹136A. (1) Notwithstanding anything contained in any other law, if the Commissioners, in exercise of the powers conferred on them by rules made under this Act, cancel the allotment of any premises made to any employee of the Commissioners, the Commissioners may, by notice in writing, order such allottee or any other persons who may be in occupation of the whole or any part of the premises to vacate them and deliver the same to them or a person appointed by them in that behalf within such period as may be specified in the notice.

Power to evict certain from the premises belonging to the Commissioners.

Explanation.—For the purposes of this section, “premises” means any building or part of building and includes—

- (i) the gardens, grounds and outhouses, if any, appertaining to such building or part of a building ;
- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof ; and
- (iii) any furniture, books or other things belonging to the Commissioners and found in such building or part of a building.

(2) If any allottee or other person refuses or fails to comply with an order made under sub-section (1), any presidency-magistrate or magistrate of the first class may, on application made by or on behalf of the Commissioners, order any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Commissioners or a person appointed by them in that behalf and the police officer may for that purpose, use such force as may be necessary.

(3) Any such notice as is referred to in sub-section (1) may be served—

- (a) by delivering or tendering it to the allottee or any other person who may be in occupation of the whole or any part of the premises, or
- (b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises, or
- (c) registered by post.

137. Any person who wilfully deposits, or permits his servants to deposit any dust, dirt, dung, ashes, refuse or filth of any kind, or any animal matter, or any broken glass, earthenware or rubbish, in or upon any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners, or in or upon any part of the river bank within the Port, shall be liable to a fine not exceeding ten rupees for each offence.

Penalty for committing certain nuisances on docks, etc.

¹See foot-note 5 on page 76, ante.

[Ben. Act III]

(Chapter X.—Miscellaneous.—Sections 138—143.)

Jurisdiction in case of offences committed within Calcutta.

138. (1) Every charge of an offence against any provision of this Act, or of any rule, order or bye-law made under the provisions of this Act, alleged to have been committed within Calcutta may be instituted before any Magistrate having jurisdiction, who may summon the person charged to appear at a time and place to be mentioned in the summons ;

and if such person do not appear, the Magistrate may upon proof of service of the summons, if no sufficient cause shall be shown for the non-appearance of the person charged, proceed to hear and determine the case in his absence.

(2) If such person do appear, then the procedure laid down in the Code of Criminal Procedure, 1882¹, from sections 242 to 248 (both inclusive), shall be followed.

Act X of 1882.

Jurisdiction in case of offences committed out of Calcutta.

139. Every charge of an offence against the provisions of this Act, or of any rule, order or bye-law made under the provisions of this Act, alleged to have been committed out of Calcutta, may be heard and determined by any officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, according to the provisions of the Code of Criminal Procedure, 1882².

Police-officers to give immediate information of certain offences.

140. It shall be the duty of all police-officers, whether members of the Port Police Force or not, to give immediate information to the Commissioners of any offence committed contrary to the provisions of this Act, or of the Indian Ports Act, 1889³, or of any bye-laws or rules having the force of law prescribed in accordance therewith.

Act X of 1889.

Police-officer may arrest persons committing nuisances.

141. (1) Any such police-officer may arrest any person committing in his view any offence against any of the said provisions, if the name and address of such person be unknown.

(2) Such person may be detained at the station-house until his name and address shall be correctly ascertained.

Time allowed for institution of suits.

142. No suit shall be brought against any person for anything done, or purporting or professing to be done, in pursuance of this Act, after the expiration of three months from the day on which the cause of action in such suit shall have arisen.

Application of certain provisions of the Act to aircraft.

*143. The provisions of sections 35, 89, 91, 97, 99 to 102 (both inclusive), 104, 104A, 105, 106, 121, 122, 126 and 135 shall apply in relation to all aircraft making use of the port while on water as they apply in relation to vessels.

¹Act X of 1882, was repealed and re-enacted by the Code of Criminal Procedure, 1898 (Act V of 1898), and this reference should now be taken to be made to sections 242 to 248 (both inclusive) of the latter Act.

²This reference should now be taken to be made to the Code of Criminal Procedure, 1898 (Act V of 1898).

³Act X of 1889 was repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

⁴This section was inserted by sec. 127 of the Port Trusts and Ports (Amendment) Act, 1951 (XXXV of 1951).

The Calcutta Port Act, 1890.

[Ben. Act III of 1890.]

(First and Second Schedules.)

FIRST SCHEDULE.

*(See Section 2.)**Acts of the Lieutenant-Governor of Bengal in Council.*

Number and year.	Subject.	Extent of repeal.
Act V of 1870 . .	To appoint Commissioners for making improvements in the Port of Calcutta.	So much as has not been repealed.
Act IV of 1879 . .	To provide for the levy of fees upon certain passenger boats and steam-ferries.	The whole.
Act IV of 1880 . .	For amending the Calcutta Port Improvement Act, 1870.	So much as has not been repealed.
Act I of 1881 . .	To amend the Calcutta Port Improvement Act (Amendment Act), 1880.	The whole.
Act II of 1883 . .	To amend the Calcutta Port Improvement Act, 1870.	Ditto.
Act II of 1885 . .	To enable the Commissioners for the Port of Calcutta to construct docks.	Ditto.
Act III of 1887 . .	To amend the Calcutta Port Improvement Act, 1870.	Ditto.

¹[*

*]

²SECOND SCHEDULE.*(See Section 91.)**Form of Receipt for Goods.**By the Commissioners ³[of] the Port of Calcutta.*

LANDED during the day of from the
by the Commissioners ³[of] the Port of Calcutta the
noted in the margin (if there be any apparent injury this is to be
stated), contents and the state of the contents unknown.

For the Commissioners ³[of] the Port of Calcutta.

CALCUTTA ;

A. B.

day of

19

¹The original Second Schedule was repealed by the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

²This Schedule was originally numbered "Third Schedule" and has now been re-numbered "Second Schedule" by sec. 10 of the Calcutta Port (Amendment Act, 1907 (Ben. Act II of 1907).

³See *Read* (for)—See sec. 4.

Bengal Act III of 1894

(The Calcutta Tramways Act, 1894.)¹

FURTHER AGREEMENT VALIDATED Ben. Act IV of 1900.
REPEALED IN PART . . . Act I of 1903.

ADAPTED

- (a) The Government of India
(Adaptation of Indian
Laws) Order, 1937.
- (b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order,
1948.
- (c) The Adaptation of Laws
Order, 1950.

(2nd May, 1894.)

An Act to give effect to an agreement made between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

Whereas it is expedient to sanction and give effect to a memorandum of agreement made the second day of September, 1893, between the Corporation of Calcutta of the one part, and the Calcutta Tramways Company, Limited, of the other part, a copy whereof is set forth in the schedule to this Act ; and whereas without the authority of the Legislature the said memorandum of agreement would be of no effect ;

Preamble.

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Tramways Act, 1894. (Commencement.)—*Rep. by sec. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).*

Short title.

2. The memorandum of agreement, a copy whereof is set forth in the schedule of this Act, is hereby authorised, sanctioned and declared valid and binding upon the Corporation of Calcutta and upon the Calcutta Tramways Company, Limited, and its assignees.

The agreement declared valid.

SCHEDULE.

(Referred to in section 2.)

MEMORANDUM OF AGREEMENT made this second day of September 1893 BETWEEN THE CORPORATION OF CALCUTTA incorporated under Act II of 1888² of the Lieutenant-Governor of Bengal in Council hereinafter called "the Corporation" of the one part and THE CALCUTTA TRAMWAYS COMPANY LIMITED a Company incorporated under the English Companies Acts having its Registered Office in England hereinafter called "the Company" of the other part WHEREAS the Corporation

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1894, Pt. IV, page 36 ; and for Proceedings in Council, see *ibid*, Supplement, pages 242, 345 and 478.

LOCAL EXTENT.—Since this Act merely supplements the Calcutta Tramways Act, 1880 (Ben. Act I of 1880), it has the same local extent as that Act.

²Ben. Act II of 1888 was repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act III of 1899), which was also repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), which was again repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

[Ben. Act III of 1894.]

(Schedule.)

are the successors of the Corporation of the Town of Calcutta the parties of the first part to the annexed articles of agreement dated the 2nd day of October 1879 and the Company is the assignee of the rights and liabilities under the said articles of agreement of Dillwya Parrish Alfred Parrish and Robinson Souttar the parties thereto of the other part AND WHEREAS under and by virtue of the 17th Clause of the said articles of agreement the present rent payable by the Company to the Corporation is calculated at the rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line AND WHEREAS the said articles of agreement do not contain any express provision prohibiting the Company after the opening of any Tramway from discontinuing the working of such Tramway AND WHEREAS the parties hereto have deemed it expedient and have mutually agreed subject to the sanction and authorization of their said agreement by an Act of the ¹[West Bengal] Legislature that the said articles of agreement should be varied or modified to the extent and in the manner hereinafter appearing Now these PRESENTS WITNESS that subject to these presents being sanctioned and authorized by an Act of the ²[State Government] to be hereafter passed for the purpose and in consideration of the said mutual agreement and of the covenants hereinafter contained and on the part of the Corporation and of the Company respectively to be observed and performed the Corporation do hereby covenant with the Company and its assigns and the Company for itself and its assigns doth hereby covenant with the Corporation in manner following that is to say—

1. Subject as next hereinafter provided the rent payable by the Company to the Corporation from the 1st January 1894 to the 31st December 1900 being the end of the 21st year referred to in the said 17th clause of the said articles of agreement shall be calculated and paid at the present rate namely at the rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line anything in the said articles of agreement to the contrary notwithstanding. Provided nevertheless that a remission of fifteen thousand rupees a year shall be granted for five years with effect from 1894 subject to the condition that the dividends declared by the Company do not exceed three and-a-half *per cent. per annum* during that period.

2. The Company shall not during the period from 1st January 1894 to 31st December 1900 without the previous sanction of the Corporation discontinue the working of any of its tramways which now or hereafter may be opened for traffic.

¹These words were substituted for the word "Bengal" by Article 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words "Provincial Government" were originally substituted for the words "Lieutenant Governor of Bengal in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act III of 1895

(THE LAND RECORDS MAINTENANCE ACT, 1895.)

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[Ben. Act III of 1895.]

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Bengal Act III of 1895

(The Land Records Maintenance Act, 1895.)¹

AMENDED Ben. Act I of 1939.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	...	(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
		(c) The Adaptation of Laws Order, 1950.
		(29th May, 1895.)

An Act to provide for the maintenance of Records of tenant-rights in Bengal², and for the recovery of the cost of Cadastral Surveys and Settlements.

Whereas it is expedient to provide for the maintenance of records of tenant-rights and of settlement records in Bengal², and for an alternative method of recovering the cost of cadastral surveys and settlements ;

Preamble.

It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called “The Land Records Maintenance Act, 1895.”

Short title.

(2) It shall come into force only in districts or parts of districts of which a field survey and a record of rights have been made under Chapter X of the Bengal Tenancy Act, 1885, or under any other law for the time being in force, and to which the ³[State Government] may, from time to time, extend it by an order published in the ⁴[*Official Gazette*] ;

Extent.

and thereupon this Act shall commence and take effect in the districts or parts of districts named in such order on the day which shall be in such order provided for the commencement thereof.

Commence-
ment.

VIII of
1885.

LEGISLATIVE PAPERS—For Statement of Objects and Reasons, *see the Calcutta Gazette*, of 1895, Pt. IV, page 4 ; and for Proceedings in Council, *see ibid*, 1895, Supplement, pages 142, 326, 494, 589, 659 and 720.

LOCAL EXTENT.—This Act extends only to districts or parts of districts notified under sec. 1.

²This includes the present State of West Bengal and other territory.

³The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words “*Calcutta Gazette*”, by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act III]

(Part I.—Preliminary.—Part II.—Registration of Mutations.—
Sections 2—5.)Interpre-
tation ,
clause.

2. (1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885, shall have the meanings attributed to them, respectively, in that Act,

VIII of
1885.

and the word “addition” shall have the meaning attributed to it in the Indian Registration Act, ¹[1908].

XVI of
1908.

(2) By the term “record of rights” shall be understood the settlement record of tenant-rights called the *khatian* or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue to form the record of rights for any district or part of a district. A record of rights includes entries duly made in a Register of Mutations.

PART II.

REGISTRATION OF MUTATIONS.

Registrars
of Muta-
tions.

3. The Sub-Registrars appointed under the Indian Registration Act, ¹[1908], shall be Registrars of Mutations under this Act.

Registers.

4. The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the ²[State Government], including, for every village within the limits of the sub-district, a Register of Mutations, in which there shall be recorded changes affecting the record of rights of that village, and containing such particulars as the Board of Revenue may, from time to time, with the sanction of the ²[State Government], prescribe.

Landlords'
statements.

5. (1) Whenever the ²[State Government] shall issue a notification in the ³[Official Gazette] to that effect, every landlord shall, within the period prescribed in the notification, file, in the office of the Registrar of Mutations, within the sub-district in which his tenants' land is situated, a statement, in a form to be prescribed by the ²[State Government] showing truly, to the best of his knowledge and belief, the changes, if any, which have taken place in his tenants' rights, by reason of transfer or succession, since the record of rights was prepared, or since the last statement was filed.

(2) The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the ²[State Government] may from time to time direct.

¹These figures were substituted for the figures “1877” by sec. 2 and Sch. I of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 3 on page 85, *ante*.

³See foot-note 4 on page 85, *ante*.

of 1895.]

(Part II.—Registration of Mutations.—Sections 6—8.)

6. Every tenure-holder, *raiyyat* at fixed rates and occupancy *raiyyat*, who transfers his tenure or holding, or any part thereof, and every person claiming to be in possession of any tenure or holding as a tenure-holder, *raiyyat* at fixed rates, or occupancy *raiyyat* in consequence of a transfer or of intestate or testamentary succession, shall, within four months from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations within whose sub-district the whole or some portion of the land to which the notice relates is situate, at his office :

Notice of transfer or succession to be given to Registrar of Mutations.

Provided that a notice under this section is receivable although the prescribed period has elapsed :

Provided further that when any person has duly given notice under this section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession :

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, ¹[1908], all persons are released from obligation of giving notice under this section in respect of the same transfer.

XVI of 1908.

7. The notice shall contain :— ,

The contents of the notice.

- (a) in the case of a transfer, the names of the transferor and the transferee, or in the case of a succession, the name of the deceased and his successor,
- (b) a specification of the nature of the interest transferred or acquired,
- (c) the survey number of the lands as entered in the record of rights, and
- (d) such further particulars as the ²[State Government] may, from time to time, prescribe

8. (1) The Registrar of Mutations shall, on receipt of a notice under section 6, whether given within the prescribed period or not, from a transferor or transferee, ascertain if both the transferor and the transferee, or in the case of the death of either party since the transfer, if the one party and the representative of the other party admit the transfer, or in the case of the death of both parties if their respective representatives admit the transfer, and if both transferor or transferee or their respective representatives admit the transfer, he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say) :

Duty of Registrar on receipt of notice from transferor or transferee.

- (a) the signature and addition of every person admitting the transfer ; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent,

¹See foot-note 1 on page 86, *ante*.

²See foot-note 3 on page 85, *ante*.

[Ben. Act III]**(Part II.—Registration of Mutations.—Sections 9—11.)**

(b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such transfer, and shall affix the date and his signature to these endorsements, and shall register the transfer in the Register of Mutations in such manner as the ¹[State Government] shall from time to time by rule prescribe.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different times, at his office ;

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is :—

- (a) exempt by law from personal appearance in Court,
- (b) unable, by reason of bodily infirmity, without risk or serious inconvenience, to attend at the office, or
- (c) in jail under Civil or Criminal process.

Duty of
Registrar
on receipt
of notice
from

9. The Registrar of Mutations on receipt of a notice under section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity of such person and causing the signature and addition of such person to be endorsed on the notice, by a notice affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny the succession, and if within that period no one appears and denies the succession, he shall endorse a statement of the fact on the notice, affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the ¹[State Government] shall from time to time by rule prescribe.

Appearance
by agent.

10. Notwithstanding anything contained in sections 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-
attorney.

11. (1) For the purposes of the last preceding section, the powers-of-attorney here mentioned shall alone be recognized—

- (a) if the principal at the time of executing the power-of-attorney resides in ²[a Part A State or a Part C State],

¹ See foot-note 3 on page 85, *ante*.

² The words "a Province of India" were originally substituted for the words "British India" by paragraph 3(1) and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter these words were substituted for the words "a Province of India" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1895.]

(Part II.—Registration of Mutations.—Sections 12, 13.)

XVI of
1908.

a power-of-attorney executed before and authenticated by any Magistrate or the Registrar or Sub-Registrar appointed under section 6 of the Indian Registration Act, ¹[1908], within whose district or sub-district the principal resides :

- (b) if the principal at the time aforesaid does not reside in ²[a Part A State or a Part C State], a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, ³[Indian Consul] or Vice-Consul or representative ⁴** *
* * of the ⁵[Central Government] :

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section :—

- persons exempt by law from personal appearance in Court ;
- persons who by reason of bodily infirmity are unable, without risk or serious inconvenience, so to attend ; and
- persons who are in jail under Civil or Criminal process.

(2) In every such case the officer, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court. To obtain evidence as to the voluntary nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer herein-before mentioned in that behalf.

12. The law for the time being in force as to summonses, commissions and the compelling the attendance of persons summoned in suits before Civil Courts shall, *mutatis mutandis*, apply to any summons or commission issued, and any person summoned, under this Act.

Law as to
summonses
and com-
missions.

13. Whenever a Registrar of Mutations, after receipt of a notice under section 6, does not register the transfer or succession in respect of which it is given, he shall make an entry of the fact and state his reasons in such manner as the ⁶[State Government] may from time to time prescribe.

Reason for
refusal to
register to
be re-
corded.

¹See foot-note 1 on page 86, *ante*.

²See foot-note 2 on page 88, *ante*.

³The words "Indian or British Consul" were originally substituted for the words "British Consul" by paragraph 3(1) and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the words "or British" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴The words "of Her Majesty or" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶See foot-note 3 on page 85, *ante*.

[Ben. Act III]**(Part II.—Registration of Mutations.—Sections 14—17.)**

Procedure
on denial
of transfer.

14. If any of the persons purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of either if his representative denies the transfer,

or if any such person appears to be a minor, an idiot, or a lunatic, or

if any person, where the claim is by succession, appears before the Registrar on issue of a notice under section 9, and denies the succession,

the Registrar of Mutations shall refuse to register the mutation.

Procedure
when
trans-
feror's
name not
in record
of rights

15. If the name of a transferor, or of a deceased person through whom succession is claimed, inserted in a notice given under section 6, is not recorded in the record of rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be, by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice.

And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

Appeal
against re-
fusal to
register.

16. (1) When a Registrar of Mutations has made an order refusing to register a transfer or succession, an appeal shall lie within thirty days from the date of the order against such order to the Collector of the district to whom such Registrar of Mutations is subordinate; and the Collector may, after taking such evidence as he thinks necessary, reverse or alter such order: and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order,

and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under section 6.

(2) No appeal shall lie from any order of a Collector passed under this section.

Registrar
to give
receipt for
notice and,
if required,
copy of
entries in
register.

17. The Registrar of Mutations shall give to the person giving a notice under section 6 a receipt therefor, and shall, upon his application, grant to him, free of charge, a copy of the entries made in the Register of Mutations in pursuance of such notice.

of 1895.]

(Part II.—Registration of Mutations.—Sections 18—21.)

18. (1) On payment of the prescribed fees the Register of Mutations shall be open to inspection by any person applying to inspect the same, and a copy of any entry therein shall be given to any person applying therefor.

Registrar to allow inspection and to give certified copies of entries in register.

(2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.

19. (1) The ¹[State Government] shall from time to time prepare tables of fees payable—

Fees to be fixed by the State Government.

(a) for the registration of mutations—

(i) within the prescribed period,

(ii) after the prescribed period,

(b) for copies of entries in the Register of Mutations,

(c) for inspecting the Register of Mutations,

(d) for notices, processes and commissions given or issued under this Act,

(e) for such other matters as appear to the ¹[State Government] necessary to effect the purposes of this Act,

and may from time to time alter such tables.

(2) Tables of fees so payable shall be published in the ²[Official Gazette], and a copy thereof in English and the Vernacular language of the district shall be exposed to public view in the office of every Registrar of Mutations.

(3) All fees for the registration of mutations shall be payable at the time when the notice is given under section 6.

VIII of 1885.

20. The fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885, may be paid to the Registrar of Mutations, when notice is given under section 6, and such payment shall be held to be payment to the Collector, and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.

Fees under Tenancy Act.

21. Any non-occupancy *raiyat*, or under-*raiyat*, if he thinks fit, may give any notice which a tenure-holder, *raiyat* at fixed rates and occupancy *raiyat* is bound to give under section 6, and if he gives such notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.

Notice by non-occupancy or under-*raiyats*.

¹ See foot-note 3 on page 85, *ante*.

² See foot-note 4 on page 85, *ante*.

[Ben. Act III

(Part II.—Registration of Mutations.—Sections 22—26.)

Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutations.

Disability on failure to give notice.

Penalty for omission to give notice under section 6.

Penalty for omission to file statement under section 5.

Penalty for omitting to make entry or making incorrect entry in Register with intent to injure.

22. A Sub-Registrar, registering an instrument effecting a transfer of tenant-right, or, under the provisions of sections 64 and 65 of the Indian Registration Act, ¹[1908], receiving a memorandum of a transfer of tenant-right, shall, as Registrar of Mutations, make an entry in the Register of Mutations as if he had received a notice under section 6.

XVI of 1908.

23. (1) No person bound to give notice under section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice, and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.

(2) No tenant bound to give notice under section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenure-holder, *raiyyat* at fixed rates or *raiyyat* with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

24. Whoever voluntarily or negligently omits to give, within the prescribed time, notice under section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the district may see fit to impose.

25. After a notification has been issued under section 5, whoever voluntarily or negligently omits to file, within the period therein specified, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the district may see fit to impose :

Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the district at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.

26. Every Registrar of Mutations and every person employed in his office for the purposes of this Act, who being charged with the duty of making any entry in the Register of Mutations, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to two years or with fine, or with both.

Act XLV of 1860.

¹See foot-note 1 on page 86, *ante*.

of 1895.]

(Part II.—Registration of Mutations.—Part III.—Recovery of Expenses of a Survey and Preparation of a Record of Rights.—Sections 27—30.)

27. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both :—

Penalty for certain other offences.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Registrar of Mutations in any proceeding or enquiry under this Act ;

Making false statement before Registrar of Mutations.

(b) falsely personates another, and in such assumed character presents any notice or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ;

False personation.

(c) abets, within the meaning of the Indian Penal Code, anything made punishable under this or the last preceding section.

Abetment of certain offences.

Act XLV of 1860.

PART III.

RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION OF A RECORD OF RIGHTS.

28. It shall be lawful for the ¹[State Government], instead of proceeding under section 114 of the Bengal Tenancy Act, 1885, to recover, from all or any of the proprietors, landlords, tenants and rent-free owners and occupiers in any district or part of a district, either in one year or several years, and in the manner specified in the sections following, their shares of all the expenses declared by the ¹[State Government] to be recoverable from proprietors, landlords, tenants, and rent-free owners, which have been incurred in making a survey and record of rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885, such costs not having been incurred for the purposes of a settlement of land-revenue.

Recovery of expenses of initial survey, etc.

VIII of 1885.

29. The ¹[State Government] may from time to time determine the total expenses which have been incurred in any district or part of a district in making a survey and record of rights, and the amounts (in such proportions as the ¹[State Government] may from time to time determine) which shall be paid by the proprietors, landlords, tenants and rent-free owners and occupiers respectively in such district or part of a district, and the date from which the expenses aforesaid shall be recovered ; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

Area, rate and date of recovery of expenses.

30. The amount due from proprietors shall be paid together with such instalment of land-revenue as the ¹[State Government] may direct, and arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

Payment of expenses by proprietors.

¹See foot-note 3 on page 85, ante.

[Ben. Act III]

(Part III.—Recovery of Expenses of a Survey and Preparation of a Record of Rights.—Part IV.—Miscellaneous.—Sections 31—35.)

Payment of expenses by tenants and rent-free owners and occupiers.

31. The amount due from tenants and rent-free owners and occupiers shall, subject to any orders passed by the ¹[State Government] under section 28, be paid by them to the Settlement Officer, on tender of such extract from the record of rights as they may be entitled to receive.

Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

Recovery from successors in interest.

32. When any proprietor, landlord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable, and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses, or any portion thereof, from the person in possession of such interest or portion thereof.

Such expenses shall be recoverable under the law for the time being in force for the recovery of public demands.

PART IV.

MISCELLANEOUS.

Registrars of Mutations to be public servants, and their records public records.

33. Every Sub-Registrar appointed under this Act to be a Registrar of Mutations, and every person appointed temporarily to discharge the duties of any such office, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and all official records and papers kept by any such officer under this Act shall be held to be public records and the property of ²[the Government].

Act XLV
of 1860.

Appeals.

34. Every order of a Registrar of Mutations affecting any entry in the Register of Mutations shall be appealable for a period of one month from the date thereof to the Collector of the district.

No appeal shall lie from any order of a Collector passed under this section.

State Government may vest officer with special appellate powers.

35. The ¹[State Government] may from time to time vest any officer other than the Collector of the District with special appellate powers under this Act : and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

¹See foot-note 3 on page 85, ante.

²The words "the Crown" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1895.]

(Part IV.—Miscellaneous.—Section 36.)

36. (1) The ¹[State Government] or the Board of Revenue, with the sanction of the ¹[State Government], may, from time to time, make, repeal and alter rules consistent with this Act—

Power to make rules for selection, etc., of Sub-Registrars.

- (a) regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishments ;
- (b) prescribing the manner of making entries of mutations in the record of rights, preparing new editions of such records, and re-publishing them from time to time, or otherwise making them available for public information ;
- (c) regarding the distribution of the expenses incurred under Part III, and
- (d) generally for the purpose of giving effect to the provisions of this Act.

VIII of
1895.

(2) The provisions of section 190 of the Bengal Tenancy Act, 1885, shall apply to rules made under clauses (b), (c) and (d).

¹See foot-note 3 on page 85, *ante*.

Bengal Act I of 1896

(THE PROTECTION OF MUHAMMADAN PILGRIMS ACT, 1896.)¹

REPEALED IN PART	..	..	{ Act XIV of 1927. Act XX of 1932.
REPEALED IN PART AND AMENDED	..	..	Ben. Act II of 1929.
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	..	..	{ (b) The India Indepen- dence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950. (10th June, 1896.)

An Act to provide for the protection of Muhammadan Pilgrims.

Whereas it is expedient to provide for the protection of Muhammadan Pilgrims ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Protection of Muhammadan Pilgrims Act, 1896 ;

(2) It extends in the first instance to Calcutta only ; but the ²[Central Government] may, by notification in the ³[Official Gazette] extend it to any other place in the ⁴[State] of ⁵[West Bengal], and

(3) It shall come into force—

(a) in Calcutta, from the date on which it may be published in the ³[Official Gazette] with the assent of the ⁶[President], and

(b) in any place to which it may be extended by notification under sub-section (2) of this section, from date specified in this behalf in such notification.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1896, Pt. IV, page 3 ; for Report of Select Committee, see *ibid*, page 5 ; and for Proceedings in Council, see *ibid*, 1896, Supplement, pages 406, 464, 695, and 737.

LOCAL EXTENT.—This Act extends to Calcutta, and may be extended by notification to any other place in West Bengal, see sec. 1 (2).

²These words were substituted for the words "Local Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1), *ibid*.

⁴This word was substituted for the word "Province" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶This word was substituted for the word "Governor-General" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Short
title,
extent
and com-
mence-
ment.

[Ben. Act I

(Sections 2, 3.)

Definitions.

2. In this Act, unless there be something repugnant in the subject or context,—

(a) “pilgrim” means a Muhammadan who is proceeding to or returning from the *Hedjaz* ;

(b) “pilgrim broker” means a person who buys and resells, or sells on commission, or takes any reward for the purchase or sale of passage tickets, whether by sea or railway, for pilgrims ;

¹[(bb) “*Muallem*”, means a person who offers for monetary consideration to act as a guide to pilgrims and includes any person employed by or acting for the furtherance of the business of, or under the direction of such guide :

Provided that a *Muallem* who is an Arab subject shall be excluded from the restrictions imposed by or under this Act ;]

(c) “agent” includes a person who has chartered a ship for the conveyance of pilgrims ;

(d) “Calcutta” means the area for the time being included in “Calcutta” as defined in ²[the Calcutta Municipal Act, 1923,] and includes the Port of Calcutta ; and

Ben. Act
III of 1923.

(e) “Commissioner of Police” means—

(i) as regards Calcutta, the Commissioner of Police for that town, and

(ii) as regards any place to which this Act may hereafter be extended, any person whom the ³[Central Government] may appoint, by name or by virtue of his office, to perform in such place the functions of the Commissioner of Police under this Act.

Grant of
licenses to
act as
pilgrim
brokers or
Muallems.

3. (1) The Commissioner of Police shall from time to time grant licenses empowering persons to act as pilgrim brokers ⁴[or *Muallems*.]

(2) The ⁵[Central Government] may, from time to time, make rules to regulate the grant of such licenses and to prescribe the conditions to be embodied therein.

(3) All such rules shall be published in the ⁶[*Official Gazette*].

¹Clause (bb) was inserted by sec. 2 (1) of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

²These words and figures were substituted for the words and figures “the Calcutta Municipal Consolidation Act, 1888” by sec 2 (2), *ibid.* The Calcutta Municipal Act, 1923, was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), and this reference should now be construed as a reference to the last mentioned Act.

³See foot-note 2 on page 97, *ante*.

⁴These words were added by sec. 8 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

⁵See foot-note 3 on page 97, *ante*.

of 1896.]

(Sections 4—6.)

4. Every such license shall specify—

- (a) the name and address of the licensee ;
- (b) the period for which the license is to be in force ; and
- (c) the conditions subject to which the license is granted.

Licenses
what to
specify.

5. Any person who, without a license granted under section 3, acts as a pilgrim broker ¹[or *Muallem*], or who lends to another person a license granted to himself under that section, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty
for acting
as pilgrim
broker or
Muallem
without a
license, or
for lending
license.

6. If any licensed pilgrim broker ²[or licensed *Muallem*]

(a) commits a breach of any of the conditions of his license ;
or

(b) purchases for or sells to any pilgrim a passage-ticket by any ship to which ³[the Indian Merchant Shipping Act, 1923,] applies, at any time before notice has been given by the master, owner or agent of the ship under ⁴[section 151] of that Act, of the time at which it is proposed that the ship shall sail ; or

(c) purchases for or sells to any pilgrim a passage-ticket by any ship unless the proposed time of sailing is printed on such ticket ; or

(d) charges any pilgrim a sum in excess of the cost price of any passage-ticket, or of any provisions or other articles, purchased for him, or receives from him any fee or commission on account of any such ticket ; or

(f) purchases for any pilgrim a passage-ticket on which there is not printed or stamped the price charged for the passage according to the class of accommodation secured ; or

(g) by fraud or false representation, or by any false pretence whatever, induces any person to purchase a pilgrim's passage-ticket,

he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty
for mis-
behaviour
of licensed
pilgrim
broker or
licensed
Muallem.

XXI of
1923.

¹These words were inserted by sec. 4 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

²These words were inserted by sec. 5 (1), *ibid*.

³These words and figures were substituted for the words and figures "the Native Passengers Ships Act, 1887" by sec. 5 (2), *ibid*. The Indian Merchant Shipping Act, 1923, has been repealed and re-enacted by the Merchant Shipping Act, 1958 (44 of 1958), and this reference should now be construed as a reference to the last mentioned Act.

⁴This word and figures were substituted for the word and figure "section 7" by sec 5 (2), *ibid*.

⁵Clause (e) was omitted by sec. 5(3), *ibid*.

(Sections 6A—15.)

Penalty
for receipt
of com-
mission
exceeding
five per
cent. of the
price of
passage-
tickets.

¹6A. If any licensed pilgrim broker receives from the master, owner or agent of any ship, or from any railway servant, any fee or commission in respect of the sale of any passage-ticket for a pilgrim, exceeding five *per centum* of the price of such tickets he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Power to
suspend
and cancel
licenses.

7. The Commissioner of Police may—

(a) suspend the license of any pilgrim broker ²[or *Muallem*] pending any inquiry into any accusation against him of misconduct for which, if proved, he would be liable to fine under section 6, and

³(aa) suspend the license of any pilgrim broker pending any inquiry into any accusation against him of breach of the provisions of section 6A, and

(b) cancel the license granted to any pilgrim broker ²[or *Muallem*] who is convicted of any offence under this Act or of any other criminal offence.

8 to 10.—*Rep. by sec. 24 (2) of the Port Haj Committees Act, 1932 (XX of 1832).*

11. [*Information to be supplied by master, owner or agent of ship conveying pilgrims.*]*—Rep. by sec. 4 of the Indian Merchant Shipping (Amendmend) Act, 1927 (XIV of 1927).*

12. [*Penalty for refusal or omission to give such information or for giving false information.*]*—Rep. by sec. 4 of the Indian Merchant Shipping (Amendment) Act, 1927 (XIV of 1927).*

13. [*Penalty for issuing tickets in excess.*]*—Rep. by sec 10 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).*

14. [*Passage-tickets to be numbered consecutively and to have price marked.*]*—Rep. by sec. 10 of the Protection of Muhammdan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).*

Certain
provisions
of the
Indian
Merchant
Shipping
Act, 1923,
to apply
to offences
and fines
under this
Act.

⁴15. Sections 281, 282, 286, and 288 of the Indian Merchant Shipping Act, 1923⁵, shall apply to all offences punishable and fines leviable under this Act.

XXI of
1923.

¹Section 6A was inserted by sec. 6 of the Protection of Muhammadan Pilgrim (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

²These words were inserted by sec. 7(1) *ibid.*

³Clause (aa) was inserted by sec. 7(2) *ibid.*

⁴Section 15 was substituted for the original section by sec. 9 *ibid.*

⁵The Indian Merchant Shipping Act, 1923 has been repealed and re-enacted by the Merchant Shipping Act, 1958 (44 of 1958), and this reference should now be construed as a reference to the latter Act.

of 1896.]

(Sections 16, 17.)

16. The penalties to which masters, owners and agents of ships are made liable by this Act shall be enforced only on information laid at the instance of the Commissioner of Police.

Certain penalties to be enforced only at the instance of the Commissioner of Police.

17. [Construction of references to the Native Passenger Ships Act, 1887.]—Rep. by sec. 10 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

Bengal Act V of 1897
(THE ESTATES PARTITION ACT, 1897.)

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of 1897.]

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- 115. Stay of proceedings pending appeal or revision.
- 116. Revision of proceedings connected with giving possession.
- 117. Orders as to costs on appeal.
- 118. Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.
- 119. Certain orders under this Act not liable to be contested or set aside by civil suit.
- 120. Board to be guided by orders or instructions of State Government.
- 121. Power of Board to make rules.

Bengal Act V of 1897

(THE ESTATES PARTITION ACT, 1897.)¹

REPEALED IN PART	...	...	Ben. Act XVI of 1946.
AMENDED	...	...	{ Ben. Act VI of 1935. Ben. Act I of 1939.
			{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
			{ (b) The India (Adapta- tion of Existing Indian Laws) Order, 1947.
ADAPTED	...	...	{ (c) The Indian Inde- pendence (Adapta- tion of Bengal and Punjab Acts) Order, 1948.
			{ (d) The Adaptation of Laws Order, 1950.
			(8th December, 1897.)

An Act to amend the law relating to the Partition of Estates.

Whereas it is expedient to amend the law relating to the partition of estates ;

55 and 56,
Vict., c. 14,
Act XIV
of 1882.

And whereas the sanction of the Governor-General of India has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure² ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Estates Partition Act, 1897 ;

Short
title, ex-
tent and
com-
mence-
ment.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* the *Calcutta Gazette* of 1896, Part IV, page 34 ; for Preliminary Report of Select Committee, *see* *ibid.*, 1897, Pt. IV, page 41 ; and for Proceedings in Council, *see* *ibid.*, Supplement, pages 695,741 ; 2900 ; *ibid.*, 1897, Supplement, pages 137, 160, 1687, 3364 and 4023. The final Report of Select Committee was not published in the *Calcutta Gazette*.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal, *see*, sec. 1.

²Act XIV of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (Act V of 1908).

[Ben. Act V

(Chapter I.—Preliminary.—Sections 2, 3.)

(2) It extends to the ¹[States of West Bengal and Bihar and that part of the State of Orissa which on the eighth day of December, 1897, was] ^{2*} * under the administration of the Lieutenant-Governor of Bengal³; and

(3) It shall come into force on the day⁴ on which it is first published in the ⁵[*Official Gazette*] after having received the assent of the Governor-General.

Repeal
and
savings.

2. **

(2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

Ben. Act
VIII of
1876.

Definitions.

3. In this Act, unless there be something repugnant in the subject or context,—

(i) "Board" means the Board of revenue for ⁷[the State];

(ii) "Collector" means the Collector of the district on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition is borne, and includes—

(a) any officer whom the Board generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions in respect of the partition of an estate, and

(b) any officer whom the Board specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act;

(iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate;

¹The words "Province of West Bengal and Bihar and that part of the Province of Orissa which on the eighth day of December 1897 was" were originally substituted for the word "territories" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word "States" was substituted for the word "Provinces" and the word "State" for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "for the time being" were omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³This includes the present State of West Bengal and other territory.

⁴*i.e.*, the 8th December, 1897.

⁵These words were substituted for the words "*Calcutta Gazette*" by para. 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The original sub-section (1) was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

⁷The words "the Province" were originally substituted for the words "the territories for the time being under the administration of the Lieutenant-Governor" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1897.]

(Chapter I.—Preliminary.—Section 3.)

(iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition ;

(v) "proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate ;

(vi) "recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein ;

VIII of
1885.

(vii) the words "tenure", "permanent tenure", "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885 ;

(viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable ;

(ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue ;

(x) "joint undivided estate" means an estate of which two or more persons are proprietors ;

(xi) "parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act ;

(xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act ;

(xiii) "land" does not include houses or other buildings standing thereon ;

(xiv) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant ; and "rent payable in kind" means, in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885 ;

(xv) "assets", when used with reference to land, means—

(a) in the case of land held by cultivating *raiya's*—the rent payable by them ;

(Chapter II.—Right to claim Partition.—Section 4.)

- (b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating *raiya*s if the land were occupied by them ;
- (c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure ;
- (d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and
 is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—
 the rent payable by the holder of such tenure whether he be known as *talukdar*, *patnidar* or *mukararidar* or by any other designation ;
- (e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case,
 and includes—
- (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest-rights, fisheries and all other legal sources ;
- (xvi) “assets”, when used with reference to an estate, means the assets of all land included in the estate ;
- (xvii) “Chapter” means a chapter of this Act ; and
- (xviii) “section” means a section of this Act.

CHAPTER II.

RIGHT TO CLAIM PARTITION.

Who entitled to claim partition.

4. (1) Subject to the provisions of this Act, every recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession.

of 1897.]

(Chapter II.—Right to claim Partition.—Section 5.)

(2) Any two or more of such recorded proprietors may claim that land representing the interest of all such claimants be formed into one separate estate to be held by them as a joint undivided estate ; and every provision of this Act, which applies to an applicant for partition shall apply to any two or more persons making any such claim.

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate, land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

Partition
according
to
interest.

(2) If the interest of such recorded proprietor is the proprietary right over specific *mauzas* or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said *mauzas* or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific *mauzas* or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific *mauzas* or tracts of which the assets shall bear the same proportion to the assets of such specific *mauzas* or tracts as his undivided share in such specific *mauzas* or tracts bears to the entire *mauzas* or tracts :

Provided that, if the interest of such recorded proprietor consist of such an undivided share in more than one *mauza* or tract, he shall not be entitled to have land assigned to him in every such *mauza* or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said *mauzas* or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such *mauzas* or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.

[Ben. Act V

(Chapter 11.—Right to claim Partition.—Chapter III.—Security of the Land-revenue.—Sections 6—9.)

Separation of land held in common between the proprietors of two or more estates when the estates are not under partition.

6. Whenever any land is held in common between the proprietors of two or more estates not being under partition, any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

Partition of lands under Act where a partition has been made by private arrangement.

7. (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

- (a) on the joint application of all the proprietors, or
- (b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

Tenants for life not entitled to claim partition.

8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

Future partitions not to relieve land from liability for total land-revenue, unless made as provided in this Act.

9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

of 1897.]

(Chapter III.—Security of the Land-revenue.—Sections 10—13.)

10. Except as otherwise provided in this Act, the amount of land-revenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

Amount of land-revenue to be assessed on each separate estate.

11. Subject to clauses (b) and (c) of section 2 of this Act, no partition of an estate shall be made, and no application for the partition of an estate shall be admitted,—

Restrictions on partition of estate with reference to land-revenue.

(a) if the annual amount of land-revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees ; or

(b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees ; or

(c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.

12. (1) Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in ¹[section 54 of the Code of Civil Procedure, 1908], cause the decree to be executed in the manner prescribed in ²[rules 13 and 14 in Order XXVI in Schedule I to] that Code ; and if it does so the joint and several liability of the entire estate for the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

Execution of decree for partition.

Act V of 1908.

(2) If any decree is sent to the Collector for execution under ³[section 54] of the said Code, the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

13. The Collector may refuse to admit an application for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with any other application for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out

Power to refuse partition which would result in formation of estates scattered so as to endanger the safety of the land-revenue.

¹These words and figures were substituted for the words and figures "section 265 of the Code of Civil Procedure" by sec. 2 and Sch. I of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²These words and figures were substituted for the words and figures "section 396 of", *ibid.*

³This word and figures were substituted for the word and figures "section 265", *ibid.*

[Ben. Act V

(Chapter III.—Security of the Land-revenue.—Sections 14, 15.)

of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue :

Provided as follows :

(a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact ;

(b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consist only of scattered parcels of land.

Interest
alienated
with
special
condition
as to lia-
bility for
land-

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate ;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired :

Provided that a separation of such interests may be made if the parties concerned agree—

(a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and

(b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.

Sale, for
arrears of
land-
revenue,
of an
estate
which is
under
partition.

15 If any estate has been declared to be under partition as provided in section 29, any arrears of land-revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition ; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

of 1897.]

(Chapter III.—Security of the Land-revenue.—Chapter IV.—
Initiation and Discontinuance of Partition Proceedings.—
Sections 16—18.)

III of 1859.

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of ¹[the Bengal Land-revenue Sales Act, 1859,] or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby :

Sale, for arrears of land-revenue, of share in an estate which is under partition.

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place ; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

17. Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

Applica-
tion for
partition
how to be
made.

18. Every such application shall be signed by the applicant or by his duly authorized agent, and shall contain the following particulars, so far as they are known to or can be ascertained by him, namely :—

Applica-
tion to be
signed
and to
contain
certain
particu-
lars.

- (a) the name of the parent estate ;
- (b) the number under which such estate is borne on the revenue-roll, and the land-revenue demand for which it is liable ;
- (c) the number under which such estate is borne on the Collector's General Register of the revenue-paying lands ;
- (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides ;
- (e) the character and extent of the interest of which each proprietor of the parent estate is in possession ;

¹These words and figures were substituted for the words, figures and brackets "Act XI of 1859 (an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), "by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Ben. Act V

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 19—21.)

(f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates and of the rights of such proprietors respectively in such land ; and

(g) such further particulars, if any, as may be prescribed by rules made by the Board.

Applica-
tion to be
accom-
panied by
copy of
rent-roll
and by
specifi-
cation of
previous
measure-
ments and
record-of-
rights.

19. (1) Every such application shall, subject to the provisions of sub-section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate, by any officer appointed in that behalf ¹[by the State Government] or other competent authority and of which the person verifying the application under sub-section (2) has knowledge.

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein in the manner following, or to the like effect :—

“I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be false, or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll ; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

Procedure
if applica-
tion is not
in order.

20. If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this chapter, he may either reject it or return it for amendment.

Notifica-
tion and
notice of
application.

21. If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition he shall—

(a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district

¹The words “by the Provincial Government” were originally substituted for the words “by the Government” by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 22—24.)

and at the Court of every *Munsif* and Subdivisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which, any land appertaining to the estate is known to be situated ;

- (b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate ; and
- (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

22. If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection, and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection.

Power to reject application on receipt of objection.

23. If any such objection raises any question of right or title or of extent of interest as between any application and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may instead of rejecting the application as provided in section 22,

Procedure when objection raises any question of right or title or of extent of interest.

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate ; or
- (b) direct that such proceedings be postponed for four months.

24. At the expiration of the said four months the Collector shall resume the proceedings, unless the person who has made the objection, or some other person,—

Resumption of proceedings after postponement.

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 25, 26.)

- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

Suits
instituted
after four
months
not to
affect or
stay
proceed-
ings for
partition.

25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

- (a) made a direction under clause (a) or clause (b) of section 23, or

- (b) recorded a proceeding under section 29,

by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

Decree
made while
partition
proceed-
ings are
in pro-
gress.

26. (1) Every decree affecting a parent estate made by a Civil Court after the estate has been declared under section 29 to be under partition, but before the date specified in the notice served under section 94—

- (a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and

- (b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceedings has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceedings, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors ;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed ;

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 27, 28.)

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired ;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30 ;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

27. (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

Decree made after partition proceedings completed.

(a) shall be made in recognition of the partition proceedings, and

(b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

28. (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

Power of Civil Court to order partition on application being made to Collector.

(a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate ; or

[Ben. Act V

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Section 29.)

- (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate : \

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.
- (2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.

Admission
of applica-
tion for
partition,
and pro-
cedure
thereupon.

29. If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

he shall direct that the application be admitted, and shall record a proceeding—

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate ;
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively ;
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants ;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants ; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate ;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 30—33.)

30. (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

Subsequent application for separation of another share.

(2) The Collector may reject or admit any such application ; and if he admits it may order either that proceedings for affecting such separation shall be carried on simultaneously with the previous proceedings, or that compliance with the application be postponed until such previous proceedings have been completed, and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorized or required by this chapter :

Provided that every order—

- (a) rejecting an application under section 22,
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32,

Power of Collector to refer application for partition to Deputy Collector.

and every proceeding recorded under section 29, shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under partition as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

Power of Collector to appoint Deputy Collector to carry out partition.

33. (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such inquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

Power to strike partition case off the file, on petition of parties. Recovery of costs.

(2) Any such costs which have not already been levied as provided in section 37 shall be levied in proportion to the shares of the respective proprietors.

[Ben. Act V

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Chapter V.—Establishments and Costs.—Sections 34—38.)

Power of
Commissioner to
strike
partition
case off
the file.
Recovery
of costs.

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

Power to
appoint
establish-
ments
and pre-
scribe scale
of
remunera-
tion.

35. The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board, may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

Power to
appoint
special
establish-
ment.

36. In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board, may appoint such establishment.

Estimating
and levy
of cost of
partition.

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

Apportion-
ment of
cost of
partition.

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

of 1897.]

(Chapter V.—Establishments and Costs.—Sections 39—41.)

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

- (a) shall be paid by the person making the objection, or by any one of the proprietors ; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them ; or
- (c) shall be deemed to be a part of the cost of the partition.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

On completion of partition, total cost to be declared and account adjusted.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

41. (1) Whenever it appears to the ¹[State Government] that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, ²[it] may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the ¹[State Government] that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector, or whenever a special establishment is appointed under section 36,

¹The words "Provincial Government" were originally substituted for the word "Lieutenant-Governor" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²This word was substituted for the word "he" by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter V.—Establishments and Costs.—Section 42.)

the ¹[State Government] may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Estates
Partition
Account.

42. ²[(1) The State³ Government may direct that in any district an account, to be called the "Estates Partition Account" shall be kept in which shall be entered all sums levied from the proprietors of estates in such district in respect of partitions of their estates and of all costs of making partitions of estates in such district, whether such costs are costs directed under section 43 to be defrayed by any party to any proceedings in respect of a partition, or not.]

(2) When ⁴[the keeping of an Estates Partition Account] has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may notwithstanding anything contained in the foregoing sections of this chapter, be levied according to a general scale of fees to be fixed by the Board.

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure ⁵[shewn in the said Account] shall balance one another, and shall be revised from time to time by the Board so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board may make in this behalf.

(6) An abstract of the ⁶[Estates Partition Account] of each district, made up to the end of each financial year, shall be published in the ⁷[Official Gazette] and posted up at the office of the Collector of the district.

⁸(7) A direction in force immediately before the commencement of Part III of the Government of India Act, 1935, that

26 Geo. V,
c. 2.

¹ See foot-note 1 on page 125, *ante*.

² Sub-section (1) was substituted for the original sub-section (1) by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³ The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴ These words were substituted for the words "the formation of an Estates Partition Fund", by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵ These words were substituted for the words "of the said Fund", *ibid*.

⁶ These words were substituted for the words "Estates Partition Fund", *ibid*.

⁷ These words were substituted for the words "Calcutta Gazette" by paragraph 4(1), *ibid*.

⁸ Sub-section (7) was inserted by para. 8 and Sch. IV, *ibid*.

of 1897.]

(Chapter V.—Establishments and costs.—Chapter VI.—Proceedings up to the Determination of the Partition.—Sections 43—46.)

an Estates Partition Fund shall be formed in any district shall, after that date, have effect as if it were a direction that an Estates Partition Account should be kept in that district.

43. (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

Order by Civil Court for payment by parties of costs of partition.

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportion as the court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

CHAPTER VI.

PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have, so far as they are applicable, all the powers exercisable by a Survey-officer under the Bengal Survey Act, 1875, and by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885.

Powers of Deputy Collector in making a partition.

Ben. Act V
of 1875.
VIII of
1885.

45. As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

Deputy Collector when to make survey and prepare record of existing rents and assets.

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely :—

Particulars to be recorded.

(a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein ;

(Chapter VI.—Proceedings up to the Determination of the Partition.—Sections 47, 48.)

- (b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants ;
- (c) the rent then payable for all rent-paying lands,—
 - (i) as stated by the landlord,
 - (ii) as stated by the tenant, and
 - (iii) as taken by the Deputy Collector for the purposes of the partition ; and
- (d) the assets, if any, of all other lands ;

and shall be guided by such rules as the Board may make under section 121, clause (1).

Attestation
of survey
papers and
record of
existing
rents and
assets.

47. (1) When the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board, fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board, for the purpose of attesting the survey papers and record of existing rents and other assets.

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board may by rule prescribe shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local inquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.

(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

(5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Publication
of survey
papers and
record of
existing
rents and
assets.

48. When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estate, tenure, or holding, as the case may be, as the Board may by rule prescribe.

of 1897.]

(Chapter VI.—Proceedings up to the Determination of the Partition. —Chapter VII.—Partition by Amicable Arrangement or by Arbitration.—Sections 49—51.)

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the¹[State Government], or

if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45 and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.

50. When the documents referred to in section 48 have been published or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition and shall—

Record of order, fixing of day for determining partition, and service of notices.

(a) fix a day on which to determine the partition of the lands into the several separate estates,

(b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

(c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—

(a) privately among themselves, or

Power to allow partition to be made by proprietors themselves or by arbitrators.

¹The words "Provincial Government" were originally substituted for the word "Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

[Ben. Act V

(Chapter VII.—Partition by Amicable Arrangement or by Arbitration.—Sections 52—56.)

(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself,

Procedure
on re-
ference to
arbitration.

52. When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of ³[rules 1 to 15 in Schedule II to the Code of Civil Procedure, 1908], so far as they are applicable.

Act V of
1908.

Arbitrators
to deliver a
partition
paper.

53. (1) The arbitrator or arbitrators shall within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board may, by rule, prescribe.

(2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

Remunera-
tion of
arbitrators.

54. (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the costs of making the partition.

Approval
of Collector
and other
authorities.

55. Every partition made under this chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and the confirmation of the Commissioner :

Provided that no such partition shall be disallowed except—

(a) on the ground of fraud, or

(b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

Assessment
of land-
revenue.

56. When a partition has been made under this chapter, the land-revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by section 10.

³These words and figures were substituted for the words and figures "sections 506 to 522 (both inclusive) of the Code of Civil Procedure" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1897.]

(Chapter VIII.—Making of Partitions by the Deputy Collector, and approval thereof by the Collector.—Sections 57, 58.)

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

57. (1) If no petition is presented under section 51, the Deputy Collector shall, on the day fixed under section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

Procedure where no petition presented under section 51.

- (i) consult all proprietors who are present, and
- (ii) hear, and after such inquiry as he may consider necessary, dispose of any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—

(a) a paper of partition, in a form prescribed by rules made by the Board, specifying in detail—

- (i) the lands which he has included in each separate estate, and the area of such lands,
- (ii) the rental of such lands, and the other assets, if any, of each separate estate,
- (iii) the name or names of the recorded proprietor or proprietors of each separate estate,
- (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
- (v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by section 10; and

(b) a map showing the lands which fall within each separate estate and the boundaries of such lands.

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

58. (1) The partition, as made under this chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.

Submission of case to Collector; his duties.

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

[Ben. Act V

(Chapter VIII.—Making of Partitions by the Deputy Collector, and approval thereof by the Collector.—Sections 59, 60.)

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper—

- (a) approving the partition, with or without amendments ; or
- (b) making a new partition ; or
- (c) returning the papers to the Deputy Collector for amendment of the partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.

59. (1) When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector,

(a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

(b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and

(c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as aforesaid, to take out of the Deputy Collector's office the extract of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

60. No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or section 57 for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

Duties of Deputy Collector when partition has been approved by Collector, or when Collector makes a new partition.

Proprietor not appearing on fixed day not entitled to make objection.

of 1897.]

(Chapter VIII.—*Making of Partitions by the Deputy Collector, and approval thereof by the Collector.*—Chapter IX.—*General Principles for making Partitions.*—Sections 61—64.)

61. When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of a notification as provided in section 59, the Collector—

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice ;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

Submission of the papers to the Commissioner after approval of the partition by the Collector.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this chapter.

Separate estates to be made compact.

63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from—

Circumstances to be considered in making partitions.

- (a) situation ;
- (b) the vicinity of roads, railways or navigable rivers or canals ;
- (c) the nature and quality of the soil and produce ;
- (d) the quantity of cultivable and uncultivable waste land ;
- (e) the facilities for irrigation ;
- (f) the state of embankments and water-courses ; and
- (g) liability to accretion and diluvion ;

and any other circumstances affecting the value of the land.

64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.

Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

[Ben. Act V

(Chapter IX.—General Principles for making Partitions.—
Sections 65—70).

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

Power to
apply
section 64
to gardens,
etc.

65. Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

Rent for
land fixed
under
section 64
or 65
deemed to
be the
assets of
the land.

66. The rent fixed in perpetuity on any land by the Deputy Collector under section 64 or section 65 shall be deemed, for the purposes of the partition, to be the assets of such land.

Redemp-
tion of
rent fixed
under
section 64.

67. When the dwelling-house of one proprietor, with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

Amount
payable in
redemption
of rent.

68. (1) If the Deputy Collector gives permission as aforesaid he shall certify the amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum per annum*, an annual sum equal to the said rent.

Such
amount
when
payable.

69. The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is under section 94, given to the several proprietors of the separate estates allotted to them.

Notice of
payment to
be given,
and land
to be held
rent-free.

70. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

- (a) that such payment has been made ;
- (b) that the sum will be paid to him or to his authorized agent on application ; and

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*(Chapter IX.—General Principles for making Partitions.—
Sections 71—73.)*

(c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the ¹[Government] ;

and from such date the land shall be so held as a rent-free tenure.

XI of 1859.

71. The Deputy Collector shall at the same time give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of ²[the Bengal Land-revenue Sales Act, 1859,] or by any similar law for the time being in force.

Collector to register the rent-free tenure.

72. When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

Drawing of lots for equal shares.

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate ;

Order and method of drawing lots when aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares.

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn ;

and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

¹The word "Crown" was originally substituted for the word "Government" by para. 8 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 117, *ante*.

*(Chapter IX.—General Principles for making Partitions.—
Section 73.)*

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Illustrations.

1.—The partition of a parent estate is being made into the following shares :—

8 annas.	3 annas.
4 annas.	1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.	3 annas.
4 annas.	2 annas.
1 anna.	

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share ; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares ; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot ; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

of 1897.]

(Chapter IX.—General Principles for making Partitions.—
Sections 74—76.)

74. The Deputy Collector may, by notice, require any proprietor, in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector in person or by authorised agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots ;

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf, and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an agent authorised to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

75. If any proprietor or proprietors fail to comply with a requisition of the Deputy Collector under section 74, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

76. (1) When the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint applications presented under section 7 may be to the effect—

Partition according to separate possession, and apportionment of land-

(a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and

(b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable.

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue thereon may be made in the manner proposed without endangering the safety

(Chapter IX.—General Principles for making Partitions.—
Sections 77—80.)

of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the land-revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered.

Lands of which each proprietor is in possession to be allotted to him.

77. Whenever the Deputy Collector who is appointed to carry out partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Explanation.—Land held in the occupation of the several proprietors of an estate as, *sir, khamar* or *wij-jot*, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bona fide* division, by private arrangement among the proprietors of land held by tenants.

Collector may cause transfer of lands agreed to by parties.

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

Lands held in common tenancy and Lands held in severalty.

Places of worship, etc.

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

Tanks, wells, water-courses, reservoirs and embankments.

80. (1) Tanks, wells, water-courses, reservoirs and embankments shall be deemed to be attached to the land for the benefit of which they were originally made.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that they should remain the joint property of the proprietors of two or more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

of 1897.]

(Chapter IX.—General Principles for making Partitions.—
Sections 81—83.)

81. (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

Splitting
up of
tenure or
holding
and appor-
tionment
of rent
thereof.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

82. [Land held rent-free not to be divided, except with consent of recorded proprietors.]—Rep. by sec 2 of the Estates Partition (Amendment) Act, 1935 (Ben. Act VI of 1935).

83. (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a *patni* or other permanent intermediate tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created, he may either—

Land held
at fixed
rent on
permanent
inter-
mediate
tenure.

(a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate ; or

(b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate.

(2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

[Ben. Act V

*(Chapter IX.—General Principles for making Partitions.—
Sections 84—87.)*

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

84. When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land ;

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition ;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common :

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate ; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost ;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

Allotment made under section 84 to be submitted to the Collector.

86. Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and if he rejects it, may make or direct to be made another allotment.

Land so allotted how to be dealt with.

87. When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common land.

of 1897.]

*(Chapter IX.—General Principles for making Partitions.—
Section 88.)*

88. (1) If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested, inquire into the fact of possession, and shall report his conclusions to the Collector; and thereupon the Collector shall dispose of the matter as follows :—

Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.

(a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or

(b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable; or

(c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable :

Provided as follows :—

(i) if a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be inquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector ;

(ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(2) If a partition case is struck off the file under clauses (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

[Ben. Act V

(Chapter IX.—General principles for making Partitions.—
Chapter X.—Procedure before the Commissioner up to the
completion of a Partition.—Sections 89, 90.)

Procedure
when
partition
completed
in pur-
suance of
order under
section 88,
clause (b),
and pro-
prietor of
an estate
dispos-
essed of
any land
by decree.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

Procedure
if proceed-
ings require
amendment
or if appeal
or objection
presented.

90. (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

(Chapter X.—Procedure before the Commissioner up to the completion of a Partition.—Sections 91—94.)

91. If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

Procedure in other cases.

92. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this chapter shall be applicable.

Commissioner may return the papers for amendment or inquiry as often as he thinks fit.

93. (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition,

or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

Procedure by Collector on receipt of Commissioner's order confirming, or Board's order sanctioning, a partition.

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

94. (1) The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession ;

Procedure as to giving possession of separate estates.

[Ben. Act V

(Chapter X.—Procedure before the Commissioner up to the completion of a Partition.—Chapter XI.—Miscellaneous.—Sections 95—97.)

and shall cause to be served on every recorded proprietor of a separate estate a notice—

(a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in the notice, and

(b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

Each separate estate to be borne on the revenue roll and General Register as separately liable for the land-revenue assessed upon it.

95. From the date specified in such notice, each separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land-revenue so assessed upon the estate.

Boundary marks.

96. (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate; and the cost of such boundary marks shall be deemed to be costs of the partition.

(2) Boundary marks so erected shall be assigned to *zamindars*, or to *zamindars* jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875; and, after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.

Ben. Act V
of 1875.

CHAPTER XI.

MISCELLANEOUS.

Powers of Deputy Collector as to production of documents and attendance of witnesses.

97. For the purposes of any inquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by ¹[sections 30, 31 and 32 of, and Orders XI, XII, XIII and XVI in Schedule I to, the Code of Civil Procedure, 1908,] for compelling the production of documents and enforcing the attendance of witnesses.

Act V of
1908.

¹These words and figures were substituted for the words and figures "Chapters X and XIV of the Code of Civil Procedure," by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1897.]

(Chapter XI.—Miscellaneous.—Sections 98—100.)

98. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provision of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.

General power to refer to arbitration.

99. If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in *patni* or other tenure or on lease, or has created any other incumbrance thereon, such tenure, lease or incumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

Saving of tenures, leases and incumbrances.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of the whole of his interest in the estate entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every *raiyyat* on the estate; and

partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the *raiyyats* on that estate.

II.—A, a proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every *raiyyat* on the estate; and

partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of one-half of A's separate estate and will hold his *patni* in common tenancy with the half of A's interest which A has not given in *patni*, so that B will be entitled to collect one-half of the rent payable by every *raiyyat* on A's estate, and A will be entitled to collect the other half.

100. (1) If two or more estates come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate.

Uniting of estates.

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioner.

[Ben. Act V

(Chapter XI.—Miscellaneous.—Sections 101—104.)

If separate estate falls into arrear, Collector to inquire into cause and report to Commissioner.

101. If any separate estate created under this Act falls into arrear so as to necessitate a sale of the land for the discharge of the arrear at any time within six years from the date of the confirmation or sanction of the partition by the Commissioner or the Board, as the case may be,

the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall inquire whether the same is due to any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

Power of State Government to order a new allotment of the land-revenue.

102. If it is proved to the satisfaction of the ¹[State Government] at any time within six years from the date of the confirmation or sanction of a partition by the Commissioner or the Board, as the case may be, whether or not upon inquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate,

the ¹[State Government] may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

Power to require proprietors of under-

estates to make refund to proprietors of over-

estates.

103. (1) Whenever the ¹[State Government] passes an order under section 102 for the re-allotment of the land-revenue on any separate estate, ²[it] may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

(3) No order passed by the ¹[State Government] under subsection (1) shall be liable to be contested in any Court.

Publication of notifications.

104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

(a) at the office of the Collector,

¹ See foot-note 1 on page 125, *ante*.

² See foot-note 2 on page 125, *ante*.

of 1897.]

(Chapter XI.—Miscellaneous.—Sections 105—107.)

- (b) at the office of the Deputy Collector who is to make, is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

105. (1) Any notice required by this Act to be served on any person may be served—

Service of notices.

(a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides ; or

(b) by sending a registered letter, containing the notice, to such person directed to the address, if any, which he has registered under this Act ; or

(c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act ; or

(d) by affixing a copy of the notice at the village office of the person to whom the notice is directed ;

or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

106. If the directions of this Act are in substance and effect complied with, no proceedings thereunder shall be affected—

Mistakes and irregularities not to vitiate proceedings.

(a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering material injury in consequence of such mistake or informality ; or

(b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.

107. If any proprietor or other person fails to comply, within the time fixed therefor by notice, with any requisition made upon him under this Act by the Collector, or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees.

Fine in case of non-compliance with requisition.

and such fine shall be payable daily until the requisition is complied with ;

[Ben. Act V

(Chapter XI.—Miscellaneous.—Sections 108—111.)

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine :

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

Fees, etc.,
to be
recoverable
as public
demands.

108. Except as herein otherwise expressly provided, all fees, fines, costs and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under ¹[the Bengal Public Demands Recovery Act, 1913].

Ben. Act
III of
1913.

Powers and
functions
of Deputy
Collector
may be
exercised
by Col-
lector.

109. All or any powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector ;

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

Power to
vest Col-
lector or
Deputy
Collector
with set-
tlement
powers.

110. (1) The ²[State Government] may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

(2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

Appeals
to the
Collector
and ad-
mission
by him of
objections.

111. (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

(a) directing under section 39, by whom or how the costs of an inquiry held in consequence of an objection raised shall be paid ;

(b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition ;

¹These words and figures were substituted for the words and figures "the Public Demands Recovery Act, 1895" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

²See foot-note 1 on page 125, *ante*.

of 1897.]

(Chapter XI.—Miscellaneous.—Section 112.)

(c) made under section 50, adopting a record of existing rent and other assets of land ;

(d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration ;

(e) rejecting under section 76, sub-section (3), an application for partition according to separate possession ;

(f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned ; or

(g) imposing a fine under section 107.

(2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

112. (1) An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector)—

Appeals to the Commissioner, and admission by him of objections.

(a) rejecting an application for the partition of an estate or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(b) directing, under section 29, that an application for partition or separation be admitted :

(c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition ;

(d) made under section 50, adopting a record of existing rents and other assets of land ;

(e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators ;

(f) refusing to allow a partition to be made under section 76 in accordance with separate possession ;

(g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ;

(h) confirming, amending or rejecting, under section 86, an allotment made under section 84 ;

(i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate ;

(j) imposing or confirming the imposition of a fine under section 107 ; or

(k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

(2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

(Chapter XI.—Miscellaneous.—Sections 113—115.)

Appeals
to the
Board.

113. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner—

(a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted ;

(b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted ;

(c) confirming or amending a partition as approved or made by the Collector ; or

(d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

Limita-
tion of
appeal ;
revision
by Board ;
further
appeal to
Board.

114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie ; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board in the following cases only, namely, when the order of the Collector was one—

(a) directing, under section 38, that any proprietor shall, pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;

(b) made under section 50, adopting a record of existing rents and other assets of land ;

(c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate under partition ; or

(d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

Stay of
proceed-
ings
pending
appeal or
revision.

115. When an appeal is presented under section 111, section 112 or section 113, or when the Board calls, under section 114, sub-section (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

of 1897.]

(Chapter XI.—Miscellaneous.—Sections 116—119.)

116. (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board, as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

Revision of proceedings connected with giving possession.

(2) Every such order shall, when made by the Commissioner or the Board, be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

117. The Collector, the Commissioner and the Board respectively may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

Orders as to costs on appeal.

118. If, in any case in which a Collector or other officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same as are vested by the Code of Criminal Procedure, ¹[1898] in a Civil Court when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.

Act XLV of 1860.

Act V of 1893.

119. No order—

(a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned in section 11 ; or

(b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 or section 117,

shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act:

Certain orders under this Act not liable to be contested or set aside by civil suit.

Provided that—

(i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86 ; or

(ii) any person who is aggrieved by an order made under section 88,

may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

¹These figures were substituted for the figures '1882' by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Ben. Act V of 1897.]

(Chapter XI.—Miscellaneous.—Sections 120, 121.)

Board
to be
guided by
order or
instruc-
tions of
State
Govern-
ment.

120. In the execution of the duties imposed on the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the ¹[State Government].

Power of
Board to
make
rules.

121. The Board may from time to time, with the previous sanction of the ¹[State Government] make rules,

(a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition ;

(b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them ;

(c) for determining the costs of partitions ;

(d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors ;

(e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when ²[the keeping of an Estate Partition Account] has been directed under section 42 ;

(f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors ;

(g) generally, for regulating the receipts, disbursements and management of any ³[Estates Partition Account kept] under the said section 42 ;

(h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2) ;

(i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48 ;

(j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48 ;

(k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57 ; and

(l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

¹ See foot-note 1 on page 125, *ante*.

² These words were substituted for the words "the formation of an Estates Partition Fund" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1988 (Ben. Act I of 1939).

³ These words were substituted for the words "Estates Partition Fund formed", *ibid*.

Bengal Act I of 1898

(THE CALCUTTA POLICE ACT, 1898.)¹

REPEALED IN PART . . Act I of 1903.
REPEALED IN PART . . Ben. Act I of 1939.
AND AMENDED.

ADAPTED . . { (a) The Government of India (Adap-
tation of Indian Laws) Order,
1937.
(b) The Adaptation of Laws Order,
1950.

(25th May, 1898.)

V of 1861. *An Act to extend certain portions of the Police Act, 1861 to the Town and Suburbs of Calcutta.*

VIII of 1895. WHEREAS it is expedient to extend certain portions of the Police Act, 1861 as amended by the Police Act (1861) Amendment Act, 1895, to the Town and Suburbs of Calcutta, subject to the modifications hereinafter appearing ;

55 & 56 Vict, c. 14. And whereas, the said Acts having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Calcutta Police Act, 1898 ; Short title.

(2) (Commencement).—Rep. by sec. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).

2. The portions of the Police Act, 1861 as amended by the Police Act (1861) Amendment Act, 1895, which are specified in the first column of the Schedule to this Act are hereby extended, subject to the modifications set forth in the second column of that Schedule, to—

Extension of portions of the Police Act, 1861, to the town and suburbs of Calcutta.

Ben. Act IV of 1866. (1) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866, and

Ben. Act II of 1866. (2) the area to which ³[the Calcutta Suburban Police Act, 1866] for the time being applies by virtue of any notification published under section 1 thereof.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1898, Part IV, page 538 ; for Report of Select Committee, see *ibid*, page 537 ; and for Proceedings in Council, see *ibid*, Supplement, pages 533, 639, 708, 1007, 1014 and 1025.

LOCAL EXTENT.—This Act extends to the Town and Suburbs of Calcutta—see section 2.

²The word “and” was repealed by sec. 4 and the Third Sch. of the Amending Act, 1903 (I of 1900).

³These words and figures were substituted for the words, figures and brackets “Bengal Act II of 1866 (an Act to provide for the better regulation of the police within the suburbs of the Town of Calcutta)” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

[Ben. Act I

(The Schedule.)

THE SCHEDULE.

Portions of the Police Act, 1861, extended.	Modifications.	V of 1861.
1	2	
So much of section 1 as—		
(a) defines "property," "person", and "month" and 1* " " " "		
Section 15	<p>In sub-section (1) after "them" insert "or of any persons resorting to such area."</p> <p>In sub-section (2), for "The Inspector- General of Police or other officer authorized by the "[State Gov- ernment] in this behalf" read "the Commissioner of Police."</p>	
Section 15A	<p>In sub-section (4), for "The Magistrate of the district" read "Such officer as the "[State Government] may appoint in this behalf, or, in the suburbs the Magistrate of the 24- Parganas," and for "the Magistrate's" read "such officer's or Magistrate's."</p> <p>In sub-section (1), after "them" insert "or of any persons resorting to such area;" omit the words "being an inhabitant of such area;" and for "the Magistrate of the district or of the subdivision of a district within which such area is situated" read "the officer appointed under section 15, sub-section (4), or, in the suburbs, the Magistrate of the 24-Parganas."</p> <p>In sub-section (2) for "the Magistrate of the district" read "the officer appointed as aforesaid, or, in the suburbs, the Magistrate of the 24- Parganas;" and for clause (c) read :—</p> <p>(c) assess the proportion in which the same shall be paid— (i) by the inhabitants of the area specified in the pro- clamation (other than the applicant), or</p>	

*The entry "(b) relates to number and gender" was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1988 (Ben. Act I of 1989).

*The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1898.]

(The Schedule.)

V of 1861,	Portions of the Police Act, 1861, extended.	Modifications.
		<p>(ii) by the inhabitants of the area of which the persons resorting as aforesaid are inhabitants, or</p> <p>(iii) by the inhabitants of both the said areas,</p> <p>who shall not have been exempted from liability to pay under the next succeeding sub-section."</p> <p>In the proviso to sub-section (2), <i>before</i> "Magistrate" <i>insert</i> "said officer or," and for "such area" <i>read</i> "the area specified in the proclamation."</p> <p>In sub-section (4), for "the Magistrate of the district" <i>read</i> "the officer appointed as aforesaid or the Magistrate of the 24-Parganas."</p>
Section 16	...	<p>In sub-section (1), for "sections 13, 14, 15 and 15A" <i>read</i> "sections 15 and 15A."</p> <p>In sub-sections (1) and (3), for "the Magistrate of the district" <i>read</i> "the officer appointed under section 15, sub-section (4), or the Magistrate of the 24-Parganas, as the case may be."</p> <p>In sub-section (1), for "in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines" <i>read</i> "under the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and execution of warrants for the levy of fines."</p> <p>In sub-section (2), for "All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called 'the General Police Fund' and" <i>read</i> "All moneys paid or recovered under section 15."</p> <p>In sub-section (3), for "that section" <i>read</i> "the said section 15A."</p>
Section 46, sub-sections (2) and (3)		<p>In sub-section (2), <i>omit</i> the words "When the whole or any part of this Act shall have been so extended."</p> <p>In clause (a) of sub-section (3) for "Magistrate" <i>read</i> "the officer appointed under section 15, sub-section (4), the Magistrate."</p>

Bengal Act III of 1898

[THE BENGAL TENANCY (AMENDMENT) ACT, 1898.]¹

REPEALED IN PART

Act I of 1903.

Ben. Act XVI of 1946.

(2nd November, 1898.)

An Act to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885.

VIII of
1885.

WHEREAS it is expedient to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885, in the manner hereinafter appearing ;

55 & 56
Vict., c. 14.

And whereas, the said Act having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained under section 5 of the Indian Councils Act, 1892, to the requisite amendments being made by an Act of the Lieutenant-Governor of Bengal in Council ;

VII of
1870.

And whereas the sanction of the Governor General has similarly been obtained to the amendment of the Court-fees Act, 1870, which is proposed by section 7 (105) of this Act :

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Tenancy (Amendment) Act, 1898 ;

Short
title.

(Commencement.)—*Rep. by sec. 4 and the Third Sch. of the Amending Act, 1903 (1 of 1903).*

2 to 7.—*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).*

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form shall be deemed to have been duly published.

Validation
of publi-
cation
of past
records.

9. (1) Every settlement of rent or decision of a dispute by a Revenue-officer under section 104 or section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final :

Effect of
settlements
of rents
and
decisions
by
Revenue-
officers
made
before
the com-
mence-
ment of
this Act.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* the *Calcutta Gazette* of 1897, Pt. IV, page 107 ; for Report of Select Committee, *see* *ibid*, 1898, Pt. IV, page 515 ; and for Proceedings in Council, *see* *ibid*, 1897, Supplement, pages 1213, 1688, *ibid*, 1898, Supplement, pages 529, 670 and 762.

LOCAL EXTENT.—Since this Act merely amends the Bengal Tenancy Act, 1885 (VIII of 1885), its local extent must be taken to be the same as that of the latter Act.

²The word “and” was repealed by sec. 4 and the Third Sch. of the Amending Act, 1903 (1 of 1903).

[Ben. Act III of 1898.]

(Sections 10, 11.)

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeals be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure¹ relating to appeals shall, as nearly as may be apply to all such appeals. Act XIV of 1882.

10.—*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).*

11. (Repeal of Bengal Act V, 1894.)—*Rep. by sec. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).*

¹Act XIV of 1882 was repealed and re-enacted by the Code of Civil Procedure, 1908 (Act V of 1908), and this reference should now be taken to be made to that Code—*see* sec. 158, thereof.

Bengal Act I of 1899

(THE BENGAL GENERAL CLAUSES ACT, 1899.)

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Bengal Act I of 1899

(THE BENGAL GENERAL CLAUSES ACT, 1899.)¹

AMENDED	...	{ Ben. Act I of 1914. Ben. Act I of 1939. Ben. Act I of 1940.
REPEALED IN PART AND AMENDED.	...	ACT I of 1903.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	...	{ (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
		(c) The Adaptation of Laws Order, 1950.

(18th January, 1899.)

An Act for further shortening the language used in Bengal Acts
²[and West Bengal Acts] and for other purposes.

WHEREAS it is expedient further to shorten the language used in Bengal Acts ²[and West Bengal Acts], and to make certain other provisions relating to those Acts ;

It is hereby enacted as follows :—

PRELIMINARY.

1. This Act may be called the Bengal General Clauses Act, 1899. Short title.

2. (*Repeal of Bengal Act V of 1867.*)—Rep. by sec. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).

¹LOCAL EXTENT.—Since this Act has no “local extent” clause, it must be taken originally to have extended to the whole of the former Province of Bengal including the de-regulationised tracts.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1898, Pt. IV, page 570, and for Proceedings in Council, see *ibid*, Supplement, pages 1426, 1428, 1579 and 2538.

OTHER SIMILAR ACTS.—This Act closely follows the General Clauses Act, 1897 (X of 1897), passed by the Governor General in Council (printed in Volume V, Pt. VIII, Page 7 of the India Code). Some of its clauses are based on clauses of the Interpretation Act, 1889 (52 & 53 Vict, c. 68), printed in the Collection of Statutes relating to India, 1913. Similar Acts have been passed by other Legislatures in India, viz., Madras Acts I of 1867 and I of 1891, Bombay Act I of 1904, Eastern Bengal and Assam Act I of 1909, United Provinces Act I of 1904, Punjab Act I of 1898, and Assam Act II of 1915.

²These words were inserted by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(General Definitions.—Section 3.)

GENERAL DEFINITIONS.

Definitions. 3. In this Act, and in all Bengal Acts made after the commencement of this¹ Act² [and in all West Bengal Acts] unless there is anything repugnant in the subject or context,—

"Abet." (1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code³ ;

Act XLV
of 1860.

"Act." (2)⁴ "act," used with reference to an offence or a civil wrong, shall include a series of acts ; and words which refer to acts done shall extend also to illegal omissions ;

"Affidavit." (3)⁵ "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing ;

"Barrister." (4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland ;

* * * * *

"Bengal Act." (6)⁷ "Bengal Act" shall mean an Act made by the Lieutenant-Governor of Bengal in Council under⁸ [the Indian

24 & 25,
Vict., c.
87, 55 &
56 Vict.,
c. 14.

¹Some of the definitions in this section apply also to Bengal Acts made between the 1st June, 1867, and the commencement of the present Act—see sec. 4. For two further definitions applying to such Acts, see sec. 5.

²These words were inserted by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³See Act XLV of 1860, secs. 107, 108 and 108A, in Vol. III, Pt. IV, Page 8 of the India Code.

⁴Cf. sec. 83 of the Indian Penal Code (Act XLV of 1860) in the India Code.

⁵Cf. the definitions of "oath" and "swear" in clauses (29) and (44).

For the law relating to judicial oaths, affirmations and declarations, see the Indian Oaths Act, 1873 (X of 1873), in the India Code.

⁶As to affidavits to be used before Civil Courts, see also sec. 139 of and rules 1 to 3 in Order XIX in Sch. 1 to the Code of Civil Procedure (Act V of 1908) in the India Code.

As to affidavits to be used before a High Court in Criminal matters, see also sec. 539 and sec. 539A of the Code of Criminal Procedure, 1898 (Act V of 1898), in the India Code.

⁷Clause (5) was omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁸A similar definition is given in clause (3) of section 3 of the General Clauses Act, 1897 (X of 1897), printed in the India Code. The definition was inserted in order to introduce a uniform method of citing Acts of the Bengal Council and to suggest the abandonment of the various other methods formerly adopted, e. g. "Act (B. C.) of 1869," "Act I of 1869 passed by the Lieutenant-Governor of Bengal in Council". The method of citation most commonly adopted was "Act I (B. C.) of 1869," but the abbreviation of "(B. C.)" is peculiarly inappropriate, inasmuch as it would stand equally well for Acts of the Bombay or Burma Council, and is the recognised abbreviation for "Before Christ."

⁹These words and figures were inserted by sec. 3 and the Second Sch. of the Amending Act, 1908 (I of 1908).

of 1899.]

(General Definitions.—Section 3.)

Councils Act, 1861, or] the ¹Indian Councils Acts, 1861 and 1892 ²[or the Indian Councils Acts, 1861, 1892 and 1909, or made by the Governor in Council of Fort William in Bengal under the ¹Indian Councils Acts, 1861, 1892 and 1909] ³[or the Government of India Act, 1915, or by the Local Legislature or the Governor of Bengal under the Government of India Act, or by the ⁴[Provincial Legislature] or the Governor of Bengal under the Government of India Act, 1935.]

- (7) "Chapter" shall mean a Chapter of the Act in which the word occurs ; "Chapter."
- (8) "Collector" shall mean, in Calcutta, the Collector of Calcutta, and elsewhere the chief officer in charge of the revenue administration of a district ; "Collector."
- (9)⁵ "commencement", used with reference to an Act, shall mean the day on which the Act comes into force ; "Commencement."
- (10) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division ; "Commissioner."
- (11)⁶ "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent ; "Consular officer."
- (12) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction ; "District Judge."
- (13)⁷ "document" shall include any matter written⁸, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used or which may be used, for the purpose of recording that matter ; "Document."

¹These Acts have been repealed by the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), sec. 130 and the Fourth Schedule.

²These words and figures were added by the Bengal Laws Act, 1914 (Ben. Act I of 1914).

³These words and figures were inserted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This expression shall stand unmodified. *Vide* para. 3 and the Eleventh Sch. of the Adaptation of Laws Order, 1950.

⁵As to when an Act comes into force, *see* sec. 6.

⁶For a similar definition, *see* the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36), sec. 3.

⁷For similar definitions, *see* the Indian Penal Code (Act XLV of 1860), sec. 29, in the India Code and the Indian Evidence Act, 1872 (1 of 1872), sec. 3, in the India Code.

⁸As to construction of expressions referring to writing, *see* clause (47) of this section.

(General Definitions.—Section 3.)

- "Enactment." (14) "enactment" shall include a Regulation (as hereinafter¹ defined) and any Regulation of the Bengal Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid ;
- "Father." (15) "father" in the case of anyone whose personal law permits adoption, shall include an adoptive father ;
- "Financial year." (16) "financial year" shall mean the year commencing on the first day of April ;
- "Good faith." (17)^a a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not ;
- ** *
- ** *
- ** *
- "Immovable property." (21)^b "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ;
- "Imprisonment." (22) "imprisonment" shall mean imprisonment of either description^c as defined in the Indian Penal Code ;
- "Local authority." (23)^d "local authority" shall mean a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund ;

Act XLV
of 1860.

**

¹ See clause (35) of this section.² For a similar definition, see the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), sec. 90, and the Sale of Goods Act, 1898 (55 & 56 Vict., c. 71), sec. 62 (2).For a discussion in His Excellency the Viceroy's Council upon a similar definition of "good faith" contained in clause (20) of section 3 of the General Clauses Act, 1897, see the *Gazette of India*, March, 1897, Pt. VI, pages 55 to 62 and 76 to 79.

The definition in the present Act differs from the definition of "good faith" contained in sec. 52 of the Indian Penal Code (Act XLV of 1860).

³ Clause 18 was omitted by section 2(1) of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).⁴ Clauses 19 and 24 were omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.⁵ Clause 20 was omitted by section 2(1) of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).⁶ The expression "immovable property" is defined differently in the Indian Registration Act, 1908 (XVI of 1908), sec 2(6). For a definition of "land" applicable to Bengal Acts made between the 1st June, 1867, and the 18th January, 1899, see sec. 5.⁷ i.e., rigorous or simple, see sec. 53 of Act XLV of 1860.⁸ For a very similar definition, see the Local Authorities Loans Act, 1914 (IX of 1914), sec. 2.

of 1899.]

(General Definitions.—Section 3.)

Act V of
1898.

(25) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure¹ for the time being in force ;

"Magis-
trate."

(26) "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship ;

"Master"
(of a ship).

(27) "month" shall mean a month reckoned according to the British calendar ;

"Month."

(28) "movable property" shall mean property of every description, except immovable property ;

"Movable
property."

(29) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing⁴ ;

"Oath."

(30) "offence" shall mean any act or omission made punishable by any law for the time being in force ;

"Offence."

(31) "Part" shall mean a part of the Act in which the word occurs ;

"Part."

(32) "person" shall include any company or association or body of individuals, whether incorporated or not ;

"Person."

Act XLV
of 1860.

(33) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code⁷ ;

"Public
nuisance."

(34) "registered," used with reference to a document, shall mean registered in ⁸[a Part A State or a Part C State] under the law⁹ for the time being in force for the registration of documents ;

"Regis-
tered."

¹⁰(35) "Regulation" shall mean a Regulation made by the Governor under sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution and shall include

"Regula-
tion."

¹The Code now in force is Act V of 1898.

²For a similar definition, see the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), sec. 742, in the Collection of Statutes relating to India, 1918.

³For a comprehensive definition of the word "property," see sec. 168 of the Bankruptcy Act, 1883 (46 and 47 Vict., c. 52).

⁴*Cf.* the definition of "affidavit" in clause (3) of this section and see the foot-notes thereto.

⁵For a similar definition, see sec. 4(1) of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁶For a different definition of "person," applicable to Bengal Acts made between the 1st June, 1867, and the 18th January, 1899, see sec. 5.

⁷See Act XLV of 1860, sec. 268. For procedure in dealing with public nuisances, see Ch. X of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁸The words "a Province" were originally substituted for the words "British India" by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter these words and letters were substituted for the words "a Province" by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁹See the Indian Registration Act, 1908 (XVI of 1908).

¹⁰This clause was substituted for the former clause by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(General Definitions.—Section 3.)

38 and 34
Vict., c. 8,
5 and 6
Geo. V,
c. 61.
26 Geo. V,
c. 2.

a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935, or by the Governor under the Government of India Act, 1935, or by the President under article 243 of the Constitution ;

"Rule."

(36) ¹"rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment ;

"Schedule."

(37) "Schedule" shall mean a schedule to the Act in which the word occurs ;

"Scheduled District."

(38) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 ;

XIV of
1874.

"Section."

(39) "section" shall mean a section of the Act in which the word occurs ;

"Ship."

(40) ²"ship" shall include every description of vessel³ used in navigation not exclusively propelled by oars ;

"Sign."

(41) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions ;

"Son."

(42) "son", in the case of anyone whose personal law permits adoption, shall include an adopted son ;

"Sub-section."

(43) "sub-section" shall mean a sub-section of the section in which the word occurs ;

"Swear."

(44) ⁴"swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;

"Vessel."

(45) ⁵"vessel" shall include any ship⁶ or boat or any other description of vessel used in navigation ;

⁷(45a) "West Bengal Act" shall mean an Act made by the ⁸[Provincial] Legislature of West Bengal under the Government of India Act, 1935, ⁹[or by the Legislature of the State of West Bengal under the Constitution] ;

¹For provisions as to rules, *see* secs. 21 to 26, 29 and 30.

²For a similar definition, *see* the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), sec. 742, in the Collection of Statutes relating to India, 1918.

³For definition of "vessel", *see* clause (45) of this section.

⁴*Of* the definition of "affidavit" in clause (3) of this section, and *see* the foot-notes thereto.

⁵For a similar definition, *see* the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60), sec. 742, in the Collection of Statutes relating to India.

The word "vessel" is differently defined in the Indian Penal Code (Act XLV of 1860), sec. 48.

⁶For definition of "ship", *see* clause (40) of this section.

⁷This clause was inserted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁸This word shall stand unmodified, *see* para. 3 and the Eleventh Sch. of the Adaptation of Laws Order, 1950.

⁹These words within square brackets were added, *ibid*.

of 1899.]

(General Definitions.— Sections 4—5A.)

(46) ¹“will” shall include a codicil and every writing making a voluntary posthumous disposition of property ;

“WILL.”

(47) expressions referring to “writing” shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form ; and

“Writing.”

(48) “year” shall mean a year reckoned according to the British calendar.²

4. The definitions in section 3 of the following words, that is to say, “affidavit,” “Magistrate,” “month,” “oath,” and “swear,” apply also, unless there is anything repugnant in the subject or context, to all Bengal Acts, made between the first day of June, 1867, and the commencement of this Act.

Application of certain of the foregoing definitions to previous Bengal Acts.

5. In all Bengal Acts made between the first day of June, 1867, and the commencement of this Act, unless there is anything repugnant in the subject or context,—

Continuance of certain definitions for pur-

(1) “land” includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure ; and

previous Bengal Acts.

(2) “person” includes any incorporated company or incorporated association of persons.

X of 1897.

³5A. ⁴[(1) The definitions in section 3 of the General Clauses Act, 1897 (X of 1897) of the expressions “British India”, “Central Act”, “Central Government”, “Chief Controlling Revenue Authority”, “Chief Revenue Authority”, “Constitution”, “Gazette”, “Government”, “Government securities”, “High Court”, “India”, “Indian Law”, “Indian State”, “merged territories”, “Official Gazette”, “Part A State”, “Part B State”, “Part C State”, “Province”, “Provincial Act”, “Provincial Government”, “State”, “State Act”, and “State Government” shall apply also unless there is anything repugnant in the subject or context to all Bengal and West Bengal Acts.]

Application of certain definitions in section 1 of Act X of 1897 to all Bengal and West Bengal Acts.

(5) In any Bengal Act ⁵[or West Bengal Act], references to the “State⁶ Government” or “Central Government” in any provision conferring power to make appointments to the civil services

¹The word “will” is differently defined in the Indian Succession Act, 1925 (XXXIX of 1925), sec. 2(h).

²For definition of “financial year,” see clause (16) of this section.

³This section was inserted by section 3 of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).

⁴Sub-section (1) was substituted for the former sub-section (1) by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵These words were inserted by paragraph (1) of Article 8 of, and the Sch. to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶The word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act I

(General Definitions.—General Rules of Construction.—Section 6.)

of, or civil posts under, the Government¹ in India include references to such person as the State² Government or the Central Government, as the case may be, may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving ³[Government] in a civil capacity in India, include references to any person authorised by the State² Government or the Central Government, as the case may be, to make rules for the purpose.

(3) The references in any Bengal Act ⁴[or West Bengal Act] to servants of or under, or to service of or under, the Central Government or the State² Government or the State⁵ of ⁶[West Bengal], to property of, or belonging to, or vested in, the Secretary of State in Council or the Central Government or the Provincial Government or the Province of Bengal, and to forfeitures to the Central Government or the Provincial Government or the Province of Bengal, shall be construed as references respectively to persons in the service of the Crown, to the service of the Crown, to property vested in the Crown, and to forfeitures to the Crown.

General Rules of Construction.

6. ⁷[(1) Where any Bengal Act or West Bengal Act is not expressed to come into operation on a particular day,—

(a) in the case of a Bengal Act or West Bengal Act made before the commencement of the Constitution, it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor General or His Majesty, as the case may require, is first published in the *Official Gazette*, and if it is an Act of the Governor of Bengal, on the day on which it is first published as an Act in the *Official Gazette* ;

(b) in the case of a West Bengal Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the *Official Gazette*.]

(2) Unless the contrary is expressed, a Bengal Act ⁴[or West Bengal Act] shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

¹The word "Government" was substituted for the word "Crown", by paragraph 4(1) of the Adaptation of Laws Order 1950.

²The word "State" was substituted for the word "Provincial", *ibid*.

³This word was substituted for the words "His Majesty" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴See foot-note 5 on page 167, *ante*.

⁵The word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶Substituted for the word "Bengal" by para. 3 (2) of the Indian Independence (Adaptation of Bengal and Punjab) Acts Order, 1948.

⁷Sub-section (1) was substituted for the former sub-section (1) by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1899.]

(General Rules of Construction.—Sections 7—8A.)

7. In this Act, and in every Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, the date of such publication as is mentioned in section 6, ²* * * shall be printed above the title of the Act, and shall form part of the Act,

Printing of date on which Act is published after having received the assent of the Governor, Governor-General or His Majesty or the President.

8. Where this Act, or any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

Effect of repeal.

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done³ or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability⁴ acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

⁴8A. Where any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act repeals any enactment by which the text of any former enactment was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

Repeal of Act making textual amendment in former Act.

¹ See foot-note 5 on page 167, *ante*.

² The word, figure and brackets "sub-section (1)," were omitted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³ As to the continuance of orders, etc., made under an enactment which is repealed and re-enacted, *see* sec. 25.

⁴ This section was inserted by section 4 of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).

[Ben. Act I

(General Rules of Construction.—Sections 9—14.)

Revival
of re-
pealed
enact-
ments.

9. (1) In any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

Construc-
tion of
references
to re-
pealed en-
actments.

10. Where this Act, or any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, repeals and re-enacts with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Com-
mence-
ment and
termina-
tion of
time.

11. In any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from,” and, for the purpose of including the last in a series of days on any other period of time, to use the word “to”.

Computa-
tion of
time.

12. Where, by any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, ²[1908], IX of 1908, applies.

Measure-
ment of
distances.

13. In the measurement of any distance for the purposes of any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Gender
and
number.

14. In all Bengal Acts ³[and West Bengal Acts], unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females ; and

(2) words in the singular shall include the plural, and *vice versa*.

¹ See foot-note 5 on page 167, *ante*.

² These figures were substituted for the figures “1877” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1908 (Ben. Act I of

³ These words were inserted by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948,

6f 1899.]

(General Rules of Construction.—Powers and Functionaries.—Sections 14A—20.)

14A. [*References to the Sovereign.—Rep. by para. 3 and the Eleventh Sch. of the Adaptation of Laws Order, 1950.*]

POWERS AND FUNCTIONARIES.

15. Where, by any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act, any power is conferred ²[then, unless a different intention appears] that power may be exercised from time to time as occasion requires.

Powers conferred to be exercisable from time to time.

16. Where, by any Bengal Act ¹[or West Bengal Act], a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to appoint *ex-officio*.

17. ³Where, by any Bengal Act ¹[or West Bengal Act], a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Power to appoint to include power to suspend or dismiss.

18. In any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Substitution of functionaries.

19. In any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Successors.

20. In any Bengal Act ¹[or West Bengal Act] made after the commencement of this Act it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Official chiefs and subordinates.

¹See foot-note 5 on page 167 *ante*.

²These words were substituted for the words "on the Government, then" by sec. 6 of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).

³As to section 17, see the Notes on Clauses appended to the Statement of Objects and Reasons, in the *Calcutta Gazette* of 1898, Pt. IV, page 571.

[Ben. Act I

(Provisions as to Orders, Rules, etc., made under Enactments.—
Sections 21—24.)

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER
ENACTMENTS.

Construc-
tion of
orders, etc.,
issued
under
Bengal
Acts or
West

Acts.

Power to
issue
to include
power to
add to,
amend,
vary or
rescind
orders,
etc.

Making of
rules or
by-laws
and issuing
of orders
between

and com-
mence-
ment of
Bengal Act
or West
Bengal
Act.

Provisions
applicable
to making
of rules or
by-laws
after
previous
publica-
tion.

21. Where, by any Bengal Act ¹[or West Bengal Act], a power to issue any order, scheme, rule, by-law, notification or form is conferred, then expressions used in the order, scheme, rule, by-law, notification or form, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

22. Where, by any Bengal Act ¹[or West Bengal Act], a power to ²[issue] orders, rules, by-laws, or notifications is conferred, then, that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, by-laws or notifications so ³[issued].

23. Where, by any Bengal Act ¹[or West Bengal Act], which is not to come into operation ⁴[immediately on the passing thereof], a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act,

then that power may be exercised at any time ⁵[after the passing of the Act], but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

24. Where, by any Bengal Act ¹[or West Bengal Act], a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely :—

(1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby ;

¹See foot-note 5 on page. 167, *ante*.

²This word was substituted for the word "make," by sec. 7 of the Bengal General Clauses (Amendment) Act, 1940 (Ben. Act I of 1940).

³This word was substituted for the word "made" *ibid*.

⁴These words were substituted for the words "on the day on which it is first published in the *Calcutta Gazette* after having received the assent of the Governor General" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "after the Act has been published as aforesaid", *ibid*.

of 1899.]

(Provisions as to Orders, Rules, etc., made under Enactments.—
Miscellaneous.—Sections 25, 26.)

- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the ¹[Government concerned] prescribes ;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;
- (4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified ;
- (5) the publication in the ²[Official Gazette] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act ³[or West Bengal Act] with or without modification, then, unless it is otherwise expressly provided, any ⁴[appointment], order, scheme, rule, by-law, notification or form ⁵[made or] issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been ⁶[made or] issued under the provisions so re-enacted, unless and until it is superseded by any ⁴[appointment], order, scheme, rule, by-law, notification or form ⁵[made or] issued under the provisions so re-enacted.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

MISCELLANEOUS.

26. Sections 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of

Recovery of fines.

Act XLV
of 1860.
Act V of
1898.

¹The words "Central Government or, as the case may be, the Provincial Government" were originally substituted for the words "Local Government" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter these words were substituted for the words "Central Government or, as the case may be, the Provincial Government" by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²These words were substituted for the words "Calcutt Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 5 on page 167, *ante*.

⁴This word was inserted by sec. 3 and the Second Sch. of the Amending Act, 1908 (1 of 1908).

⁵These words were inserted, *ibid*.

(Miscellaneous.—Sections 27—30.)

warrants for the levy of fines¹ shall apply to all fines imposed under any Bengal Act ²[or West Bengal Act] or any rule or by-law made under any Bengal Act ²[or West Bengal Act], unless the Act, rule or by-law contains an express provision to the contrary.

Provision as to offences punishable under two or more enactments.

27. Where an act or omission constitutes an offence³ under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

28. Where any Bengal Act ²[or West Bengal Act], made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of enactments.

29. (1) In any Bengal Act ²[or West Bengal Act], and in any rule, by-law, instrument or document made under, or with reference to any Bengal Act ²[or West Bengal Act], any enactment may be cited by reference to the title or short title (if any)⁴ conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act, and in any Bengal Act ²[or West Bengal Act], made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving for previous Acts, rules and by-laws.

30. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts, rules or by-laws.

¹ See secs. 886 to 889 of Act V of 1898.

² See foot-note 5 on page 167, *ante*.

³ For definition of “offence”, see sec. 3(30), *ante*.

⁴ Short titles have been conferred on all the enactments printed in the West Bengal Code.

of 1899.]

(Miscellaneous.—Section 31.)

¹31. The provisions of this Act shall apply,—

(a) in relation to any Eastern Bengal and Assam Act as in force in West Bengal and any Regulation made by the Governor under section 92 of the Government of India Act, 1935, as they apply in relation to a Bengal Act or West Bengal Act made by the Provincial Legislature, and in relation to any Ordinance promulgated by the Governor of Bengal under section 88 or section 89 of the said Act or by the Governor of West Bengal under section 88 of the said Act, as they apply in relation to a Bengal Act made under the said Act by the Governor ; and

(b) in relation to any Ordinance promulgated by the Governor under article 213 of the Constitution or any Regulation made by the Governor under subparagraph (2) of paragraph 5 of the Fifth Schedule to the Constitution, as they apply in relation to a West Bengal Act made by the State Legislature :

Applica-
tion to
Eastern

and
Assam
Acts and
Ordinances
and Re-
gulations.

Provided that clause (b) of sub-section (1) of section 6 of this Act shall apply to any Ordinance referred to in clause (b) as if for the reference in the said clause (b) of sub-section (1) to the day of the first publication of the assent to an Act in the *Official Gazette* there were substituted a reference to the day of the first publication of the Ordinance in that *Gazette*.

¹Section 81 was substituted for the former section 31 (which was inserted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937,) by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

Bengal Act IV of 1900

[THE CALCUTTA TRAMWAYS (ELECTRIC TRACTION) ACT, 1900]¹

(22nd August, 1900.)

An Act to give effect to an agreement made on the 9th December, 1899, between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

WHEREAS an agreement, a copy whereof is set forth in the schedule to this Act, was made between the Corporation of Calcutta and the Calcutta Tramways Company, Limited, on the 9th December, 1899 ;

AND WHEREAS it is declared in the said agreement that the same shall be subject to sanction and authorization by an Act of the Bengal Legislative Council to be thereafter passed for the purpose ;

AND WHEREAS it is expedient that such sanction and authorization should be given ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Tramways (Electric Traction) Act, 1900.

Short title.

2. The agreement, a copy whereof is set forth in the schedule to this Act, is hereby sanctioned and authorized ;

Sanction to the agreement.

and the concessions or contracts, dated respectively the 2nd October, 1879, and the 22nd November, 1879, and the agreement of the 2nd September, 1893, in such agreement mentioned, and the Calcutta Tramways Act, 1880, and the Calcutta Tramways Act, 1894, shall, so far as may be necessary to validate and give effect to such agreement, be extended, varied or modified.

Ben. Act
I of 1880.
Ben. Act
III of
1894.

THE SCHEDULE.

Agreement, dated 9th December, 1899, between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

ARTICLES of agreement made this ninth day of December, 1899, BETWEEN THE CORPORATION OF CALCUTTA constituted by and under the Calcutta Municipal Consolidation Act, 1888² of the Bengal Legislative Council, hereinafter called the Corporation of the one part,

Ben. Act
II of
1888.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1900, Pt. IV, page 64 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 7 and 14.

LOCAL EXTENT.—Since this Act merely supplements the Calcutta Tramways Act, 1880 (Ben. Act I of 1880), it has the same local extent as that Act.

²Ben. Act II of 1888 was repealed and re-enacted by Ben. Act III of 1899, which Act again was repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923). The Act of 1923 was further repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

[Ben. Act IV

(The Schedule.)

and THE CALCUTTA TRAMWAYS COMPANY, LIMITED, a company incorporated under the English Companies' Acts, having its registered office at 11, Abchurch Lane, London, hereinafter called the Company, of the other part.

WHEREAS, by two Concessions or Contracts the first thereof being dated the 2nd October, 1879, and made between the Corporation of the town of Calcutta constituted by and under Act IV of 1876¹ of the Bengal Legislative Council of the one part and Dillwyn Parrish, Alfred Parrish and Robinson Souttar, in such Concession or Contract described and therein and hereinafter referred to as the grantees, of the other part, and the second Concession or Contract being dated the 22nd November, 1879, and made between the Chairman of the Municipal Commissioners of the Suburbs of Calcutta, a body created and rendered corporate by Act V of 1876² of the Bengal Legislative Council, of the one part, and the said Dillwyn Parrish, Alfred Parrish and Robinson Souttar as grantees, of the other part, which Concessions or Contracts respectively received the sanction of the Lieutenant-Governor of Bengal and were further sanctioned by an Act of the Bengal Legislative Council entitled the Calcutta Tramways Act, 1880, the grantees, their heirs, executors, administrators and assigns were authorized to construct, maintain and use, in the manner, upon the terms and subject to the conditions and provisions in the said Concessions or Contracts respectively expressed and contained, certain lines of tramway therein respectively referred to in Calcutta and the Suburbs thereof respectively, and were also entitled, subject to the conditions and provisions in the said Concessions or Contracts respectively expressed and contained, to the exclusive right of laying and constructing, maintaining and using a tramway or tramways within the limits of the Calcutta Municipality and of laying, constructing, maintaining and using a tramway or tramways within the limits of the Calcutta Suburban Municipality ;

AND WHEREAS the Corporation are, under and by virtue of Act II of 1888³ of the Bengal Legislative Council, the successors of the Corporation of the Town of Calcutta, parties of the first part to the said Concession or Contract of 2nd October, 1879, and of the Chairman of the Municipal Commissioners of the Suburbs of Calcutta, party of the first part to the said Concession or Contract of the 22nd November, 1879, and the Company are the assignees of the grantees, parties of the second part to the said Concessions or Contracts of the 2nd October, 1879, and 22nd November, 1879, respectively. AND WHEREAS, by the said Concession or Contract of

¹Ben. Act IV of 1876 was repealed and re-enacted by Ben. Act II of 1888, and the latter Act was repealed and re-enacted by Ben. Act III of 1899, which Act was again repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923). The Act of 1923 was further repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

²Ben. Act V of 1876 was repealed and re-enacted by Ben. Act III of 1884, which Act was again repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932).

³See foot-note 2 on page 177, *ante*.

of 1900.]

(The Schedule.)

the 2nd October, 1879, it was agreed that in consideration of such Concession the grantees would pay rent at the several rates therein specified for the several periods in the said Concession or Contract mentioned ;

AND WHEREAS it was by the said Concession or Contract of the 2nd October, 1879, further agreed and provided that the Corporation of the town of Calcutta and their successors should have the right of purchasing the said tramways, with the plant, buildings, stores, rolling-stock and everything connected therewith upon the expiration of twenty-one years from the commencement of the said Concession or Contract, upon declaring their intention so to do in writing not less than six months before the expiration of the said twenty-one years, and should have a renewed right of purchase at the end of every seven years after the expiration of the said twenty-one years upon similar notice being given, and the consideration for such purchase should be a cash payment of one and two fifths of the amount of the invested capital of the said grantees or securities of the Government of India or securities the interest whereon should be guaranteed by the Secretary of State for India in Council or debentures of the said Corporation of such amount as to produce, at the rate of interest current on such securities, *7 per cent. per annum* on the amount of the said invested capital, and, if the consideration for such purchase should be given in such securities as aforesaid, the grantees should be entitled to have in addition a first mortgage of all the property, assets and profits of the tramway or tramways which should have been purchased from them ;

AND WHEREAS, by an agreement bearing date the 2nd day of September, 1893, and made between the Corporation of the one part and the Company of the other part, such agreement being sanctioned by Act III of 1894¹ of the Bengal Legislative Council, after reciting *inter alia* that under and by virtue of the 17th Clause of the said Concession or Contract of the 2nd day of October, 1879, the rent then payable by the said Calcutta Tramways Company, Limited, to the said Corporation of Calcutta was calculated at the rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line, it was in reference thereto agreed that the rent payable by the said Company to the Corporation from the 1st January, 1894, to the 31st December, 1900, being the end of the 21st year referred to in the said Concession or Contract of the 2nd October, 1879, should be calculated and paid at the said rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line, anything in the said Concession or Contract of the 2nd October, 1879, to the contrary notwithstanding, and the said agreement contained a proviso, which has since become inoperative, that a remission of Rs. 15,000 a year should be granted for five years with effect from 1894 subject to the condition that the dividends declared by the Company should not exceed $3\frac{1}{2}$ *per cent. per annum* during that period ;

¹The Calcutta Tramways Act, 1894.

(The Schedule.)

AND WHEREAS the said Company some time since proposed to the Corporation to substitute electric traction for horse-power traction heretofore employed in the working of the tramways approved of by the Corporation and constructed and maintained by the Company, and to make such alterations in the construction of the said tramways as might be necessary to render the lines suitable to the adoption of such substituted traction, to which proposal the said Corporation assented ;

AND WHEREAS the said Company have, with the assent of the said Corporation, already effected the necessary alteration in the construction of portions of the said tramways ;

AND WHEREAS the parties hereto have deemed it expedient and have mutually agreed, subject to the sanction and authorization of this agreement by an Act of the Bengal Legislative Council, that the said Concessions or Contracts of the 2nd October, 1879, and of the 22nd November, 1879, and the said agreement of the 2nd September, 1893. shall be varied or modified to the extent and in the manner hereinafter appearing ;

NOW THESE PRESENTS WITNESS that, subject to the sanction and authorization thereof by an Act of the Bengal Legislative Council to be hereafter passed for the purpose, and in consideration of the said mutual agreement and of the covenants hereinafter contained and on the part of the said Corporation and of the said Company, respectively, to be observed and performed, the Corporation do hereby covenant with the Company and its assigns, and the Company for itself and its assigns doth hereby covenant with the Corporation, in manner following, that is to say :—

1. Preparatory to the introduction of the system of electric traction hereinafter mentioned, the Company will in a good and substantial manner alter and re-construct the several tramways in Calcutta constructed and now maintained by the Company and specified in the schedule hereto, and all other tramways in Calcutta now maintained by the Company other than the tramways specified in the said schedule, by removing therefrom the rails of the pattern and weight hitherto laid and maintained by the Company in connection with and for the purposes of the system of horse-power traction at present employed in working the said tramways, and by substituting for such rails in the existing gauge rails of such pattern and weight as shall in the opinion of the Engineer to the Corporation be suitable for electric traction.

2. The Company will execute and completely finish the work of alteration and re-construction of the said tramways, as to those specified in the schedule hereto by the 31st December, 1899, and will execute and completely finish the work of alteration and re-construction of the said tramways, other than those so specified in the said Schedule, with all reasonable and proper despatch.

(The Schedule.)

3. The Company will, within the period of three years from the date of this agreement, introduce and provide throughout the whole of the tramways of the Company a system of electric traction by means of overhead wires and of a description approved and accepted by the Corporation, in substitution for the existing system of horse-power traction, and will within the period aforesaid furnish and fully and efficiently equip the said tramways with all plant and machinery necessary for the purpose and render the said system of electric traction so to be substituted sufficient and complete in all details as a working system, and, having so introduced and provided the said system of electric traction and so furnished and fully and efficiently equipped the said tramways, will give notice in writing of the completion of the said system to the Corporation. The said system of electric traction shall be completed to the satisfaction in all respects of the Engineer to the Corporation, and, on the Engineer to the Corporation satisfying himself that the said system of electric traction is complete, efficient and in good working order and safe for public service and that the tramways and tramcars are in proper condition, he shall grant a certificate to that effect to the said Company, and from the date of the said certificate the said Company shall work the said system of electric traction.

4. If the Company shall not within the said period of three years from the date of this agreement complete the said system of electric traction in all details to the satisfaction of the Engineer to the Corporation, the Company shall be liable to and shall for such failure pay to the Corporation a penalty or fine of Rs. 200 for each day or part of a day until the said system of electric traction shall be completed in all details to the satisfaction of the said Engineer. The said penalty or fine shall be paid by the Company on demand thereof being made by or on behalf of the Corporation, and in the event of non-payment thereof shall be recoverable in full from the Company. If the Engineer to the Corporation shall decide that any work or thing to be done or provided under this agreement is not to his satisfaction, and the Company shall take objection to such decision as being unreasonable, the question shall be referred to and settled by arbitration in the manner provided by the said Concession or Contract of the 2nd October, 1879.

5. The Corporation shall have the right of purchasing the said tramways with the plant, machinery, land, buildings, rolling-stock, stores and everything connected therewith belonging to the Company, on the 1st January, 1931, upon declaring their intention so to purchase the same in writing not less than six calendar months before the said date, and the Corporation shall have a renewed right of purchase at the end of every seven years after 1st January, 1931, upon similar notice being given. The consideration for such purchase shall be a cash payment of twenty-five times the difference between the average gross annual receipts and the working expenses of the Company which said working expenses shall *inter alia* include track-rent and the proper up-keep and maintenance of the said tramways, plant, machinery, buildings and rolling-stock,

(The Schedule.)

and any sum payable under clause 6. The average of the gross annual receipts and the working expenses for the purposes of such purchase shall be determined by taking the average of the seven years immediately preceding the date of such purchase. Upon the expiry of the said notice, the Company shall make over to the Corporation the entire tramways, plant, machinery, land, buildings, rolling-stock, stores and everything connected therewith. If the payment by the Corporation of the consideration for such purchase shall be delayed beyond the period of thirty days from the date of the expiration of the notice so to be given, the Corporation will pay to the Company interest on the amount of such consideration or such part thereof as shall be unpaid at the rate of 5 *per cent. per annum* from the date of the expiration of such notice, until payment, but in no event shall the said consideration be allowed to remain unpaid for more than six months from the date on which the same shall become due and payable. The provisions of this clause shall be in lieu of and not in addition to any power of purchase now vested in the Corporation under the said Concessions or Contracts of the 2nd October, 1879, and the 22nd November, 1879, or either of them, or the Calcutta Tramways Act, 1880, or otherwise.

Ben. Act.
I of 1880.

6. The Company will, prior to the date of the expiration of the notice to be given by the Corporation under and pursuant to the last preceding clause, well and sufficiently repair to the satisfaction of the Engineer to the Corporation such of the said tramways and of the said plant, machinery, buildings, rolling-stock and other things or such portions thereof, respectively, as shall then be in need of repair, and will place or restore the same in or to a good and serviceable order and condition, and will so make over the same to the Corporation. If default shall be made by the Company in complying with the provisions of this clause, the Corporation shall for such default, and to the extent thereof, be entitled to a deduction from the consideration for the purchase of the said tramways, plant, machinery, land, buildings, rolling-stock, stores and premises of the Company as aforesaid, the fact whether such default has occurred and the amount of such deduction to be determined by arbitration in the manner provided in the said Concession or Contract of the 2nd October, 1879.

7. Until such date as the Company shall have completed the said system of electric traction in all respects to the satisfaction of the Engineer to the Corporation, the Company will pay to the Corporation track-rent at the rate at which the same is now paid or may be payable by the Company under the said Concessions or Contracts of the 2nd October, 1879, and the 22nd November, 1879, and the said agreement of the 2nd September, 1893. On and from the date on which the Company shall have completed the said system of electric traction in all respects to the satisfaction of the Engineer to the Corporation, and thereafter throughout the period which shall elapse until the tramways, plant, machinery, buildings, rolling-stock, stores and premises shall be purchased by the Corporation in exercise of the liberty accorded by clause 5, the Company will pay to the

of 1900.]

(The Schedule.)

Corporation the fixed tract-rent of Rs. 35,000 *per annum* in respect of all the now-existing tramways without exception, provided that, if the working by the Company of any now-existing tramway or any portion thereof shall with the previous sanction of the Corporation be hereafter discontinued, the Company shall be entitled to a proportionate reduction of the said fixed rent in respect of the tramway or portion thereof, the working whereof, shall be so discontinued.

8. As from the date on which the Company shall have completed the said system of electric traction, and throughout the period which shall elapse between such date and the date of the purchase by the Corporation of the property of the Company in manner hereinbefore provided, the Company shall on all tramways the subject of this agreement provide and maintain such a full and proper daily service of tramcars running in both directions as shall in the opinion of the Chairman of the Corporation be sufficient for the requirements and convenience of the public.

9. If the Company shall in any respect fail to maintain a fit and proper daily service of tramcars to the satisfaction of the Chairman of the Corporation, or shall in any respect fail to maintain the tramways in good and efficient order or the tramcar in efficient condition to the satisfaction of the Engineer of the Corporation, the Chairman or the Engineer, as the case may be, shall give notice to the Company to make good any default by a date to be named in such notice, and should the Company take objection to such notice as being in any respect unreasonable, the matter in question shall be referred to arbitration in the manner provided in the said Concession or Contract of the 2nd October, 1879, and the arbitrators or their umpire shall, by their or his award be empowered to direct the Company to do all works and things necessary to keep the tramways in good and efficient order or to maintain a fit and proper daily service of tramcars or to maintain the cars in efficient condition, as the case may be, and the Company shall forthwith comply with the direction in such award within such period as shall be named therein, and, from the date of the submission to such arbitration or the date that may be fixed by the Engineer, if his decision is accepted, the Company shall, until they shall have complied with such notice or direction, be liable to pay and on demand by the Corporation shall pay the full track-rent provided for in the said Concession or Contract of the 2nd October, 1879, and shall forfeit all right to or benefit of any modification of such rent during such period.

10. And it is expressly agreed and declared that, subject to the sanction and authorization of this Agreement by an Act of the Bengal Legislative Council, the said Concessions or Contracts of the 2nd October, 1879, and the 22nd November, 1879, respectively, and the Calcutta Tramways Act, 1880, Act III (B.C.) of 1894¹ and the Agreement of the 2nd September, 1893, shall be read and construed as extended and varied or modified by this agreement.

Ben. Act,
I of 1880.

¹The Calcutta Tramways Act, 1894.

[Ben. Act IV of 1900.]

(The Schedule.)

Schedule referred to in the foregoing Agreement.

Bow Bazar Street.

Lal Bazar.

Strand Road.

Dhurrumtollah Street.

Cornwallis Street.

College Street.

Welleseley Street.

Wellington Street.

Kidderpore line.

Old Court House Street.

Lower Chitpore Road.

Dalhousie Square, South.

Hare Street Junctions.

Chowringhee—all crossings.

Nimtollah Ghat Street—whole.

As witness the hands of the Chairman and two other Commissioners and the seal of the Corporation of Calcutta and the hand of John Richard Maples, the duly-constituted Attorney of the Calcutta Tramways Company, Limited, in the name and on behalf of the Company.

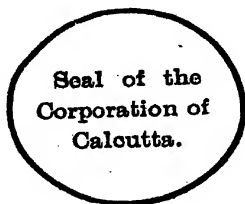
Given under the common seal of the Corporation of Calcutta and duly signed in the presence of

W. R. Macdonald,
Secretary.

W. R. Bright, C.S.,
Chairman.
Satish Chandra Ghosh,
E. M. D. Cohen,
Municipal Commissioners.

Witnesses to the signature of John Richard Maples, the duly-constituted Attorney of the Calcutta Tramways Company, Limited, in the name and on behalf of the Company.

John Cave Orr,
Attorney-at-Law.
J. W. Orr,
Attorney-at-Law,
Calcutta.



THE CALCUTTA
TRAMWAYS Co., Ltd.,
By their Attorney
John. R. Maples.

Bengal Act I of 1903

[THE BENGAL TENANCY (VALIDATION AND (AMENDMENT) ACT, 1903.]¹

REPEALED IN PART

Ben. Act XVI of 1946.

(25th February, 1903.)

VIII of
1885.

An Act to validate certian transfers, made under the Bengal Tenancy Act, 1885, of permanent tenures and holdings at fixed rents or fixed rates and of shares in the same ; and to amend section 106 of the Act.

Whereas doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 1885, as regards the payment of the prescribed landlord's fee and the effect of the non-payment of such fee ;

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid ;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing ;

Any whereas the said Act having been passed by the Governor-General of India in Council, the sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act :

55 and 56
Vict., c. 14.

It is hereby enacted as follows :—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid :

Validation
of transfers
of tenures
and hold-
ings and
shares in
the same.

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement² of this Act.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1902, Pt. IV, page 21 ; for Report of Select Committee, see *ibid*, Pt. IV, page 86 ; for proceedings in Council, see *ibid*, Pt. IVA, pages 88, 89 and *ibid*, 1903, Pt. IVA, page 1.

LOCAL EXTENT.—Since this Act amends the Bengal Tenancy Act, 1885 (VIII of 1885), its local extent must be taken to be the same as that of the latter Act.

The present Act has been extended by notifications under the Scheduled Districts Act, 1874 (XIV of 1874), sections 5 and 5A, to the Jalpaiguri district, subject to certain restrictions in the case of the Western Duars.

²i.e. the 25th February, 1903.

[Ben. Act I of 1903.]

(Sections 2—5.)

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee shall not bar a suit for rent which became payable subsequently to such claim.

Realization
of fee
when left
unpaid.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement¹ of this Act,

or within two years of the date of registration of the document affecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

Saving of
section 88.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.

VIII of
1885.

4. *Rep by Sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).*

Short
title.

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

¹i.e., the 25th February, 1903.

Bengal Act II of 1904

(THE BENGAL PUBLIC PARKS ACT, 1904.)¹

AMENDED ... West Ben. Act VI of 1959.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED ... (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(9th March, 1904.)

An Act for the regulation of Public Parks in Bengal.

Whereas it is expedient to protect public parks and gardens in Bengal from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Public Parks Act, 1904. Short title and application.

(2) It applies to the public parks and gardens mentioned in the Schedule, and may be applied to any other public park or garden in ²[West Bengal, Bihar or that part of Orissa which on the ninth day of March, 1904 was included in Bengal] by order of the ³[State Government] published in the ⁴[*Official Gazette*].

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “park” means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder ;

¹LEGISLATIVE PAPERS.—For Statement of Object and Reasons, see the *Calcutta Gazette* of 1903, Pt. IV, page 62 ; for Report of Select Committee, see *ibid*, 1904, Pt. IV, page 22 ; and for Proceedings in Council, see *ibid*, 1903, Pt. IVA, pages 218, 224 and *ibid*, 1904, Pt. IVA, pages 2 and 14.

LOCAL EXTENT.—This Act applies to the public parks and gardens mentioned in the Schedule, and may be applied to others by order—see sec. 1(2).

²These words were substituted for the word “Bengal” by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words “*Calcutta Gazette*”, by 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act II

(Sections 3, 4.)

- (b) "superintendent" means the person in executive charge of a park ; and for the purposes of section 6, sub-section (2), includes also—
- (i) an assistant superintendent of a park, and
 - (ii) any member of the Managing Committee (if any) of a park ; and
- (c) "park durwan" means any person appointed by the superintendent, or by the authority to whom the superintendent is subordinate, to act as a durwan of the park.

Power to
extend
boundaries
of park.

3. The ¹[State Government] may, by notification in the ²[Official Gazette] declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park.

Power to
make
rules.

4. (1) The ¹[State Government] may make rules for the management, and preservation of any park, and for regulating the use thereof by the public.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may—

- (a) regulate the admission of persons, horses and ponies, and carriages, palanquins and other conveyances, into the park, and prescribe fees to be paid therefor ;
- (b) prohibit or regulate the bringing of dogs, motor-cars, bicycles or tricycles into the park ;
- (c) prohibit the doing of all or any of the following things, by persons other than employees of the park, that is to say, plucking or gathering anything growing in the park, breaking trees, branches or plants, cutting names or marks on trees, disfiguring buildings, furniture or monuments, removing or disfiguring labels or marks attached to trees or plants ;
- (d) prohibit the purchase of any produce of the park otherwise than from the superintendent or some other authorised person ;
- (e) prohibit shooting, bird-nesting, the catching of butterflies, or any act of cruelty ;
- (f) prohibit or regulate fishing or boating and prescribe fees to be paid by persons obtaining permission to fish or to use boats ;
- (g) prohibit bathing, or the pollution of water by any other means ;
- (h) prohibit the grazing of horses or ponies ;
- (j) prohibit the teasing or annoying of animals or birds kept in the park.
- (k) prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park.

¹ See foot-note 3 on page 187, *ante*.

² See foot-note 4 on page 187, *ante*.

of 1904.]

(Sections 5—7.)

(3) In making any rule under this section, the ¹[State Government] may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

(4) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

(5) All rules made under this section shall be published in the ²[Official Gazette].

5. One or more copies in English and in one or more vernacular languages, of every notification published under section 3, and of all rules made under section 4 for observance by persons resorting to a park, and for the time being in force, shall be put up in the park in such conspicuous manner as the superintendent may deem best calculated to give information to such persons.

Exhibition of copies of notifications and rules in park.

9. (1) If any person who, in the presence of a park durwan in uniform, has committed or has been accused of committing a breach of any rule made under section 4, and who is unknown to such durwan, refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be detained by such durwan in order that his name or residence may be ascertained.

Refusal of offender to give name and residence.

(2) When any person is detained under sub-section (1) he shall forthwith be taken to the superintendent, or, if the superintendent be not present in the park or its immediate precincts, such person shall be taken to the nearest police-station, or if he so requests, to the nearest Magistrate having jurisdiction to try him.

(3) If the true name and residence of any person so taken to the superintendent be not ascertained within a reasonable time, the superintendent shall forthwith send for an officer of police, and shall detain the offender until the arrival of such an officer, and shall then deliver him into the custody of such officer, to be taken to the nearest police-station.

(4) If the true name and residence of any person taken to a police-station under this section be not ascertained within a reasonable time, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction to try him.

(5) When the true name and residence of any person detained under this section have been ascertained, he shall be allowed to depart.

(6) No person shall be detained under this section for a longer period than twelve hours.

7. Every superintendent and park durwan shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

Superintendent and park durwan deemed "public servants".

¹See foot-note 3 on page 187, *ante*.

²See foot-note 4 on page 187, *ante*.

[Ben. Act II of 1904.]

(Sections 8, 9 and the Schedule.)

General
powers,
duties,
etc., of
park.
durwan.

8. Every park durwan shall, in addition to any powers and immunities specially conferred on him by this Act or by rules made hereunder, have, within the limits of the park to which he is appointed, all such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable has and is liable to within the limits of the police-station in which such park is comprised :

Provided that every park durwan shall be subordinate to the superintendent.

General
powers.
etc.,
of police-
constables.

9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges, and immunities conferred on a park durwan by this Act and any rules made hereunder.

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS ACT APPLIES IN THE FIRST INSTANCE.

[See section 1, sub-section (2).]

¹[The Indian Botanic Garden, Sibpur].
The Zoological Garden, Alipur.
The Eden Gardens, Calcutta.
The Lloyd Botanical Garden, Darjeeling.
The Victoria Pleasance, Darjeeling.

¹Substituted for the words "The Royal Botanic Garden, Sibpur" by sec. 2 of the Bengal Public Parks (Amendment) Act, 1959 (West Ben. Act VI of 1959).

Bengal Act III of 1904
(THE BENGAL SETTLED ESTATES ACT, 1904.)

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Bengal Act III of 1904

(THE BENGAL SETTLED ESTATES ACT, 1904.)¹

REPEALED IN PART

{Ben. Act I of 1914.
.. {Act XXXVIII of 1920.

AMENDED

.. Ben. Act I of 1939.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED

.. { (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(9th March, 1904.)

An Act to facilitate family settlement of estates in Bengal.

Whereas it is expedient to facilitate the making of family settlements of estates by landholders in Bengal ;

XI of 1859.
X of 1865.
VII of 1870.
XV of 1877.
V of 1881.
IV of 1882.
VII of 1889.
II of 1899.
55 and 56
Vict., c. 14.

And whereas, the Bengal Land-revenue Sales Act, 1859, the Indian Succession Act, 1865, the Court-fees Act, 1870, the Indian Limitation Act, 1877², the Probate and Administration Act, 1881, the Transfer of Property Act, 1882, the Succession Certificate Act, 1889, and the Indian Stamp Act, 1899, having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Settled Estates Act, 1904 ; and

Short title
and
extent.

³[(2) It extends to the ⁴[States] of West Bengal and Bihar and to that part of the ⁵State of Orissa which on the ninth day of March 1904 was included in Bengal.]

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1903, Pt. IV, page 57 ; for Report of Select Committee, see *ibid*, 1904, Pt. IV, page 1 ; and for Proceedings in Council, see *ibid*, 1903, Pt. IVA, pages 192, 207, and *ibid*, 1904, Pt. IVA, Pages 2 and 16.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see sec. 1(2).

²Act XV of 1877 was repealed and re-enacted by the Indian Limitation Act, 1908 (IX of 1908).

³Sub-section (2) was substituted for the original sub-section (2) by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The word "States" was substituted for the word "Provinces" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The word "State" was substituted for the word "Province", *ibid*.

(Part I.—Preliminary.—Section 2.)**Defini-
tions.**

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “estate” includes—

- (i) immovable property,
- (ii) money and securities for money, and
- (iii) any jewellery or other movable property which should, in the opinion of the ¹[State Government] be treated as heirlooms ;

(b) “settled estate” means an estate in respect of which a settlement made under this Act is for the time being in force ;

(c) “settlor” means the person who makes a settlement under this Act ;

(d) “first tenant for life” means the settlor ;

(e) “second tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life, or who, on the surrender by the first tenant for life, takes his interest under the settlement ;

(f) “third tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life, or who, on the surrender by the second tenant for life, takes his interest under the settlement ;

(g) “tenant for life” means a first, second or third tenant for life ;

(h) “son” includes a son born after the execution of a settlement, and in the case of anyone whose personal law permits adoption, includes also a son—

(i) duly adopted, either before or after the execution of settlement, by the adoptive father himself, or

(ii) duly adopted to her deceased husband within five years after his death, by a widow, acting under authority, in writing and registered lawfully conferred on her by him in that behalf ;

(j) “secured debt” means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property ;

¹The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1904.]

(Part I.—Preliminary.—Part II.—Application for Permission to make a First Settlement of an Estate.—Section 3.)

- (k) “unsecured debt” means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is enforceable against the person or general property of the debtor ;
- (l) “secured creditor” means a person who is entitled to enforce payment of a secured debt ;
- (m) “unsecured creditor” means a person who is entitled to enforce payment of an unsecured debt ;
- (n) “incumbrance” means a secured debt, or an unsecured debt, or both ;
- (o) the expression “the Collector” when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated ; and
- (p) the expression “the Civil Court,” when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be “competent to contract” if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(3) All words and expressions used in this Act, which are defined in the Transfer of Property Act, 1882, shall have the same meaning as in that Act.

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. (1) Any landholder may apply to the ¹[State Government] for permission to make a settlement of an estate under this Act,—

- 1(a) if he is competent to contract,
- (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
- (c) if the estate is held in permanent, heritable and transferable right :

Who may apply for permission to settle an estate.

(2) Provided that no application may be made under subsection (1) in respect of any estate—

- (i) unless the applicant is solely entitled to the estate, or
- (ii) if the estate belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or

¹ See foot-note 1 on page 194. *ante*.

[Ben. Act III]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Sections 4, 5.)

- (iii) if the estate belongs to co-sharers—unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

Signature,
verification
and
contents
of appli-
cation.

4. (1) Every such application must be in writing, and must be signed by the applicant and verified by him in the manner prescribed in ¹[sub-rules (2) and (3) of rule 15 in Order VI in Schedule I to the Code of Civil Procedure, 1908,] for the verification of plaints.

Act V of
1908.

(2) Every such application must contain the following particulars, namely :—

- (a) a description of the estate, sufficient for its identification ;
- (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property ; and
- (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate ; with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

Declara-
tions and
draft to
accompany
applica-
tion in
the case
of an
estate
belonging
to a joint
Hindu
family
or to co-
sharers.

5. (1) If any estate in respect of which an application is made under section 3 belongs to—

- (a) a joint Hindu family, or
- (b) co-sharers,

the application must be accompanied by—

- (i) a sworn declaration by the applicant,—
 - in case (a), that he is the *karta* or managing member of the family, or
 - in case (b), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate ; and
- (ii) a sworn declaration in case (a), by the other co-owners, or in case (b) by the other co-sharers, that they are willing to assent to the estate being settled under this Act ; and
- (iii) a draft of the proposed instrument of settlement.

(2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (ii) of sub-section (1) may be accepted if it is made on behalf of such minor by the guardian of his property or (when

¹These words, brackets and figures were substituted for the words and figures "section 52 of the Code of Civil Procedure," by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939),

of 1904.]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Sections 6, 7.)

VIII of
1890.

a guardian of his property cannot lawfully be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, or any other law for the time being in force, and

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section (1) if it is

IV of
1912.

made on behalf of such lunatic by his ¹[manager appointed under the Indian Lunacy Act, 1912], or any other law for the time being in force, and

approved by an order in writing under the seal of the Court which appointed the ²[manager].

6. The ³[State Government] may in its discretion, and after such inquiry (if any) as it may think fit to make, by written order reject any application made under section 3.

Power to
reject
applica-
tion.

7. If any application made under section 3 is not rejected under section 6, and if the ³[State Government] is satisfied that the conditions specified in section 3 are fulfilled, and that the provisions of sections 4 and 5 have been duly complied with,

Transmis-
sion and
notifica-
tion of
applica-
tion.

the ³[State Government] shall send a copy of the application, and of the declarations which accompanied it, as also a copy of the draft of the proposed instrument of settlement, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5 ;

and** * * shall publish a notification—

(a) setting forth the application [except the particulars inserted therein in pursuance of clause (b) of section 4] and the declarations which accompanied it ;

(b) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to the ³[State Government] a written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification ; and

¹These words and figures within square brackets were substituted for the words, brackets and figures "Committee appointed under the Lunacy (Supreme Courts) Act, 1858, or the Lunacy (District Courts) Act, 1858" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This word was substituted for the word "Committee", *ibid.*

³See foot-note 1 on page 194, *ante*.

⁴The words "with the previous sanction of the Governor-General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[Ben. Act III]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Sections 8, 9.)

- (c) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the ¹[State Government] in writing within the said period, will be duly considered.

Rejection
or ap-
proval of
applica-
tion after
notification.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7 and after such inquiry (if any) as it may think fit to make, the ¹[State Government] may, in its discretion by written order either—

- (a) reject such application, or
(b) grant permission to make the proposed settlement, in respect either of the whole of the property to which the application relates or of any part thereof :

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the ¹[State Government], such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
(ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the ¹[State Government], for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested for claiming to be interested in the estate, the ¹[State Government] may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement; and the Civil Court shall, in dealing with any such reference follow the procedure prescribed in the Code of Civil Procedure, ²[1908], for the trial of suits, so far as the same may be applicable.

Act V of
1908.

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure ²[1908]; and an appeal therefrom shall lie to the High Court.

Rejection
no bar to
making
fresh
applica-
tion.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

¹ See foot-note 1 on page 194, *ante*.

² These figures were inserted by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act, I of 1939).

of 1904.]¹

(Part III.—Provisions to be contained in First Settlements.—
Section 10.)

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

10. (1) Every settlement made under the foregoing provisions of this Act in respect of any estate shall provide that the estate shall be held for life—

Settlement
of estates
for three
generations.

- (a) by the settlor, as first tenant for life :
 - (b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life :
 - (c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.
- (2) Every such settlement shall further provide,—
- (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely ;
 - (ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the *karta* or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate ; and
 - (iii) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate ;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

(3) If the eldest or only son of the settlor has predeceased the settlor or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the ¹[State Government], then, notwithstanding anything contained in the foregoing sub-sections, the ¹[State Government] may permit him to provide in the Settlement—

- (i) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and

¹ See foot-note 1 on page 194, *ante*.

[Ben. Act III]

*(Part III.—Provisions to be contained in First Settlements.—
Sections 11, 12.)*

- (ii) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the ¹[State Government], by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further
remainders.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further
provisions
in settle-
ments.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.

(2) Every such settlement shall also contain such provisions as may be approved by the ¹[State Government] with regard to the following matters, namely :—

- (a) the discharge of incumbrances on the estate, and the payment of interest thereon ; or their continuance (with or without modification), and the payment of interest thereon ;
- (b) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate ;
- (c) the management of the estate after the death of the settlor—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the second tenant for life ;

¹See foot-note 1 on page 194, *ante*.

of 1904.]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*—
Section 13.)

(d) the management of the estate after the death of the second tenant for life—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the third tenant for life ;

(e) the management of the estate after the death of the third tenant for life—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the next holder.

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or movable property, the settlement shall contain such provisions as may be approved by the ¹[State Government] for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorized by section 20 of the Indian Trusts Act, 1882, and the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (c).

II of 1882.

Explanation.—The Official Trustee of ²[West Bengal], the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified the ¹[State Government] may require or permit the insertion in any settlement made under the foregoing provisions of this Act, of any provisions which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted :

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. (1) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life

¹See foot-note 1 on page 194, *ante*.

²These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

Supplementary settlement in respect of property.

(Part IV.—Supplementary Settlements and Fresh Settlements.—
Sections 14—16.)

may apply to the ¹[State Government] for permission to make a supplementary settlement for the purpose of adding further property to the settled estate—

- (a) if he is competent to contract,
- (b) if he is in possession of such property, either in his own right or along with or on behalf of others, and
- (c) if such property is held in permanent, heritable and transferable right :

(2) Provided that no application may be made under sub-section (1) in respect of any property—

- (i) unless the applicant is solely entitled to the property, or
- (ii) if the property belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or
- (iii) if the property belongs to co-sharers—unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

(3) The provisions of sections 4 to 9 shall apply to every application made under sub-section (1) in respect of any property, and the provisions of sections 10 to 12 shall apply to every settlement of such property, as if the property were an “estate” within the meaning of those sections.

Power to apply for permission to make a supplementary settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the ¹[State Government],

the settlor may, if he is competent to contract, apply to the ¹[State Government] for permission to make a supplementary settlement for the purpose of appointing to be second tenant for life and third tenant for life, respectively, any other persons who might have been so appointed in pursuance of clauses (i) and (ii) of sub-section (3) of section 10.

Power to apply for permission to make a fresh settlement.

15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the ¹[State Government] for permission to make a fresh settlement of the estate.

Procedure in dealing with applications under section 14 or 15.

16. (1) The provisions of section 4, sub-section (1), and section 9 shall apply to every application for permission to make a supplementary settlement in respect of persons or a fresh settlement.

¹ See foot-note 1 on page 194, ante.

of 1904.]

*(Part IV.—Supplementary Settlements and Fresh Settlements.—
Section 16.)*

(2) If any such application relates to an estate to which the settlor was, immediately before execution of the former settlements, respectively, solely entitled, the ¹[State Government] may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—

- (i) reject the application, or
- (ii) grant permission to make the proposed settlement.

(3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.

(5) In every case referred to in sub-section (3) of this section, the ¹[State Government]

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section ;

and * * * * * shall publish a notification—

- (a) setting forth the application and the declarations which accompanied it ;
- (b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the ¹[State Government] written notice of their interests within a period of six months from the date of the notification, and
- (c) intimating that any objections by such persons to the proposed settlement, which may be communicated to the ¹[State Government], in writing within the said period, will be duly considered ;

¹See foot-note 1 on page 194, *ante*.

²The words "with the previous sanction of the Governor-General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[Ben. Act III]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*—
Part V.—*Settlements generally.*—Sections 17, 18.)

and, at any time after the expiration of the said period and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion by written order, either—

- (i) reject the said application, or
- (ii) grant permission to make the proposed settlement.

Provisions
as to fresh
settle-
ments.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of the fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

PART V.

SETTLEMENTS GENERALLY.

Approval,
stamping
and regis-
tration of
settle-
ments.

18. (1) No settlement made under this Act shall take effect unless the instrument of settlement—

- (a) is of a non-testamentary character,
- (b) is attested by two or more witnesses,
- (c) has been approved by the ¹[State Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the ¹[State Government],
- (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue has been given under sub-section (3), of one-third of such value, and

¹ See foot-note 1 on page 194, *ante*.

of 1904.]

(Part IV.—Settlements generally.—Sections 19, 20:)

(e) is registered within three months after the said approval has been certified as aforesaid.

II of 1899.

(2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of ten rupees.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

19. (1) No instrument of surrender referred to in sub-section (4) of section 10 shall take effect unless it—

Approval, stamping and registration of instruments of surrender.

(a) is of a non-testamentary character ;

(b) is attested by two or more witnesses ;

(c) has been approved by the ¹[State Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the ¹[State Government] ;

(d) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and

(e) is registered within three months after the said approval has been certified as aforesaid.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

XXXIX
of 1925.

20. (1) Notwithstanding anything contained in ²[the Indian Succession Act, 1929, it shall not be necessary for any person to obtain probate or letters of administration, or a succession certificate] to admit of his taking any property or recovering any debt or realizing any security in virtue of a settlement made under this Act.

Bar to application of succession laws, in respect of property comprised in settlement.

¹ See foot-note 1 on page, 194, ante.

² These words and figures were substituted for the words and figures "the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or the Succession Certificate Act, 1889, it shall not be necessary for any person to obtain probate or letters of administration, or a certificate under the last mentioned Act" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1988 (Ben. Act I of 1989):

[Ben. Act III]

(Part V.—Settlements generally.—Sections 21—23.)

(2) If any probate, any letters of administration or any certificate granted under ¹[the Indian Succession Act, 1925], purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870, no court-fee shall be levied under either of those Articles in respect of such property, debt or security.

XXXIX
of 1925.VII of
1870.

Power of
State
Govern-
ment to
grant
certificate
after death
of tenant
for life.

21. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the ²[State Government] may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notifica-
tion of
instru-
ments and
settlement
and instru-
ments of
surrender
or revoca-
tion of
settlement.

22. (1) When any instrument of settlement or surrender of settlement or revocation of settlement is registered, the registering officer shall report the fact to the ³[State Government]; and, on receipt of such report, the ³[State Government] shall publish a notification stating the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation
of incon-
sistent
laws.

23. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

- (a) any provision of the Transfer of Property Act, 1882, or
- (b) any law or rule for the time being in force for the prevention of perpetuities, or
- (c) any family custom or any personal law or law of succession to which the family is subject,

IV of
1882.

which is inconsistent with the provisions of this Act.

¹These words and figures were substituted for the words and figures "the Succession Certificate Act, 1899" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938.)

²See foot-note 1 on page 194, *ante*.

of 1904.]

(Part VI.—Revocation, Cancellation and Amendment of Settlements.—Sections 24, 25.)

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

24. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the ¹[State Government] for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act.

Revocation of settlement by tenant for life.

(2) The ¹[State Government], after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—

- (a) reject the application, or
- (b) grant the application applied for, or
- (c) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—

- (i) is of a non-testamentary character,
- (ii) is attested by two or more witnesses,
- (iii) has been approved by the ¹[State Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the ¹[State Government].
- (iv) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and
- (v) is registered within three months after the said approval has been certified as aforesaid.

II of 1899.

(4) Subject to the foregoing provision of this section, every such instrument shall take effect from the date of its execution.

25. (1) Notwithstanding anything hereinbefore contained, the ¹[State Government] may at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed—

Cancellation or amendment of settlement by State Government.

- (a) to be cancelled, or
- (b) to be amended so as to exclude any part of the estate described in the notification.

(2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.

¹ See foot-note 1 on page 194, ante.

[Ben. Act III]

(Part VI.—Revocation, Cancellation and Amendment of Settlements.—Part VII.—Rights and Powers of Tenant for Life, and Protection of Settled Estate during his Life.—Sections 26—29.)

Revival of
incum-
brances
or revoca-
tion, can-
cellation
or amend-
ment of
settlement.

26. When any instrument of settlement is revoked under section 24, or cancelled or amended under section 25, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, ¹[1908], revive and be enforceable as if the settlement had not been made, but subject to any payments which were made while the settlement was in force.

IX of
1908,

PART VII.**RIGHTS AND POWERS OF TENANT FOR LIFE, AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.**

Right of
tenant for
life to pro-
fits of
settled
estate.

27. All profits of a settled estate, which are realised by a tenant for life, or which, immediately before his death, were due to him but were not realised by him, shall, subject to the other provisions of this Act, belong absolutely to such tenant or his heirs, executors, administrators or assigns:

Provided that, if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, ²[1925] or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

XXXIX
of 1925.

Restriction on
alienation
by tenant
for life.

28. Except as provided in sections 29 and 30, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

Sales by
tenant for
life.

29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers, the Court shall, before determining to accord such sanction, notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate; and shall hear and duly consider any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust

¹These figures were substituted for the figures "1877" by sec.2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

²These figures were substituted for the figures "1865", *ibid.*

of 1904.]

(Part VII.—Rights and Powers of Tenant for Life and Protection of Settled Estate during his Life.—Sections 30—32.)

to re-invest the same, with the approval of the ¹[State Government], in immovable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

30. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the ¹[State Government]) for any longer term of years or in perpetuity.

Leases by tenant for life.

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then—

(a) if the lease is from year to year or for a term of years, a sum equivalent to fourth-fifths of the amount of the premium or fine, or

(b) if the lease is in perpetuity, the whole of the premium or fine shall be paid—

(i) to the trustee appointed for the purposes of section 12, sub-section (3), or

(ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose ;

II of 1882. and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882 :

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorized by rules made under section 37, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

31. Nothing in section 28 or sub-sections (1) and (2) of section 30 shall apply to leases of *raiya*ti holdings.

Saving of leases of *raiya*ti holdings.

32. (1) No settled estate or part thereof shall, during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

Bar to sale of settled estate in execution of decrees.

¹See foot-note 1 on page 194, ante.

[Ben. Act III]

(Part VII.—Rights and Powers of Tenants for Life, and Protection of Settled Estate during his Life.—Sections 33, 34.)

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder, appoint a Receiver of such estate or any part thereof, under the provisions of ¹[rules 1 to 3 and 5 in Order XL in Schedule I to the Code of Civil Procedure, 1908], for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree-holder.

Act V of 1908.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

Sale of settled estate for arrears of land-revenue, etc.

33. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or any other law, no settled estate or part of a settled estate shall, without the previous sanction of the ²[State Government], be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

XI of 1859.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29 ;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859, or any other law, as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life.

Procedure for recovery of such arrears.

34. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate or part for the recovery of the arrear is not sanctioned by the ²[State Government] under section 33, the Collector may attach the estate or part,

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

¹These words and figures were substituted for the words and figures "Chapter XXXVI of the Code of Civil Procedure" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 1 on page 194, ante.

of 1904.]

(Part VIII.—Miscellaneous.—Section 35.)

and may manage the estate or part, either directly or through a manager, for such period as may be necessary for the recovery of such arrear.

(2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and of any similar arrears that may have accrued during such period, and any interest thereon, and the expenses incurred in the management; and shall then—

- (a) pay the balance of such proceeds to the person then entitled to hold the estate, and
- (b) furnish such person with an account of the receipts and expenditure during the management, and
- (c) release the estate or part to such person.

(3) If, after a settled estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2), any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the ¹[State Government] under section 33.

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879; and may retain such charge until death of such tenant and, if the next holder is then a minor, until such minor attains his majority;

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 29 and 30 of this Act shall, while the Court of Wards has charge of the estate or part, be exercisable by the Court of Wards and not by the said tenant.

PART VIII.

MISCELLANEOUS.

35. (1) Every permission granted by the ¹[State Government] under section 8, section 10, sub-section (3), section 12, sub-section (4), section 13, section 16 or section 24 shall be in writing signed by one of the Secretaries to the ¹[State Government], and shall contain a description of the property or person in respect of which the permission is granted, sufficient to identify the same.

(2) Every permission granted by the ¹[State Government] under section 8, section 13, section 16 or section 24 shall be

Form, publication and duration of permissions granted by State Government.

¹ See foot-note 1 on page 194, ante.

[Ben. Act III of 1904.]

(Part VIII.—Miscellaneous.—Sections 36—39.)

published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifica-
tions how
to be pub-
lished.

36. Every notification prescribed by this Act shall be published in the ¹[Official Gazette] ** * * *

Power to
make
rules.

37. (1) The ²[State Government] may, after previous publication, make rules for carrying out of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the ³[State Government] may make rules for all or any of the following matters, namely :—

- (a) the procedure to be followed in submitting an application to the ⁴[State Government] under this Act ;
- (b) the form and contents of such applications, and the documents (if any) which should accompany them ;
- (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust ;
- (d) the guidance of the Collector in managing estates attached under section 34 ;
- (e) the payment or recovery of any expenses incurred ⁴[by the State Government] in connection with any proceedings taken under this Act.

Applica-
tion of
Court of
Wards
Act,
1879.

38. The provisions of the Court of wards Act, 1879, so far as they are not inconsistent with the terms of settlements duly made under this Act, shall be applicable to settled estates.

Ben. Act
IX of
1879.

Saving of
rights of
secured
creditors.

39. Nothing in this Act shall affect the rights of any secured creditor—

- (a) if his incumbrances or any of them have not been set forth in the list prescribed by section 4, clause (c), or
- (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words and brackets "and also in such Vernacular Gazettes (if any) as the Local Government may direct" were repealed by the Bengal Laws Act, 1914 (Ben. Act I of 1914).

³See foot-note 1 on page, 194, *ante*.

⁴The words "by the Provincial Government" were originally substituted for the words "by the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act I of 1905

(The Sundarbans Act, 1905.)¹

REPEALED IN PART

Ben. Act I of 1939.

(22nd March, 1905.)

An Act to provide for the abolition of the office of Commissioner in the Sundarbans.

Whereas it is expedient to abolish the Office of Commissioner in the Sundarbans ;

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 and 56
Vict., c. 14.

It is hereby enacted as follows :—

1. This Act may be called the Sundarbans Act, 1905.

Short
title.

2. [*Repeal of enactments.*]—*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben Act. I of 1939).*

3. All the powers and functions heretofore vested in, and exercised by, the Commissioner in the Sundarbans in any district shall henceforth be vested in, and exerciseable by, the Collector of that district.

Collectors
to exercise
powers
and func-
tions of
Commis-
sioner in
the Sun-
darbans.

4. In every written instrument relating to land in the Sundarbans executed prior to the commencement of this Act all references to “the Commissioner in the Sundarbans” shall be construed as referring to the Collector of the district in which the land or any part of it is situated.

Construc-
tion of
references
in written
instru-
ment.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1905, Pt. IV, page 6 ; for Report of Select Committee, see *ibid*, Pt. IV, page 9 ; and for Proceedings in Council, see *ibid*, 1904, Pt. IVA, page 155, see *ibid*, 1905, Pt. IVA, pages 10, 23 and 20.

LOCAL EXTENT.—This Act extends only to the Sundarbans.

Bengal Act III of 1905

(THE BENGAL SMOKE-NUISANCES ACT, 1905.)¹

AMENDED	...	...	...	{ Ben. Act IV of 1923. West Ben. Act VIII of 1953.
REPEALED IN PART AND AMENDED...				{ Ben. Act I of 1916. Ben. Act I of 1939.
				(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED				(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
				(c) The Adaptation of Laws Order, 1950.

(3rd May, 1905.)

An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal.

Whereas it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal^a.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Smoke-nuisances Act, 1905 ; and
- (2) It extends in the first instance to—
 - (a) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866 ;
 - (b) the suburbs of Calcutta, as for the time being defined by notifications published under section I of the Calcutta Suburban Police Act, 1866 ; and
 - (c) the station of Howrah, as described in the schedule to the Howrah Offences Act, 1857.

Short title
and extent.

Ben. Act
IV of 1866.

Ben. Act
II of 1866.

XXI of
1857.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Part IV of the *Calcutta Gazette*, dated 11th January, 1905 ; for Report of Select Committee, see Part IV of the *Calcutta Gazette*, dated 8th March, 1905 ; and for Proceedings in Council, see proceedings of the meetings held on the 17th December, 1904, the 7th and 28th January, 1905, the 11th February, 1905, and the 4th and 25th March, 1905.

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and the station of Howrah, and may be extended to other areas in West Bengal—see sections 1 and 2.

This Act has been extended by a notification issued under sec. 2 (3) to all areas within the local limits of the Tollygunge, Garden Reach and South Suburban Municipalities, in the district of the 24-Parganas, other than the areas in which the Act is already in force by virtue of sec. 1.

^aThis includes the present State of West Bengal and other territory.

(Sections 2, 3.)

Power to
extend Act.

2. (1) The ¹[State Government] may, by notification published in the ²[Official Gazette] and in such other manner (if any) as the ¹[State Government] may determine, declare its intention to extend this Act to any specified area in ³[West Bengal, Bihar or that part of the State of Orissa which on the third day of May 1905 was included in Bengal] other than the areas mentioned in section 1, sub-section (2) :

Provided that, if a military cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the ⁴[Central Government]

(2) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to the ²[State Government] within a period of three months from the publication of the said notification in the ²[Official Gazette].

(3) At any time after the expiration of the said period, and after considering the objections (if any) submitted under sub-section (2), the ²[State Government] may, by notification in the ²[Official Gazette], extend this Act to the said area.

Definitions.

3. In this Act,—

⁵[(1) “furnace” means any furnace or fireplace used—

(a) for working engines by steam, or

(b) for any other purpose whatsoever :

Provided that no furnace or fireplace—

(i) used for the burning of the dead, or

(ii) used in a private house for *bona fide* domestic purposes other than the purpose specified in clause (a),

¹The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(2) of the Adaptation of Laws order, 1950.

²These words were substituted for the words “Calcutta Gazette” by paragraph 4(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words “West Bengal, Bihar or that part of the Province of Orissa which on the third day of May 1905 was included in Bengal” were originally substituted for the word “Bengal” by paragraph (1) of Articles 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word “State” was substituted for the word “Province” by paragraph 4(2) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words “Governor General in Council”, by paragraph 4(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Clause (1) was substituted for the original clause by sec. 2 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

of 1905.]

(Sections 4, 5.)

shall be deemed to be a furnace or fireplace within the meaning of the Act ;]

(2) "Inspector" means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act ;

(3) "the Commission" means the Bengal Smoke-nuisances Commission constituted under this Act ;

¹(4) the expression "owner" when used with reference to a furnace, flue or chimney, means—

- (i) any person who owns the furnace, flue or chimney ;
- (ii) any agent or hirer using the furnace, flue or chimney ; and
- (iii) any foreman or other person superintending the working of the furnace, flue or chimney ; and

(5) "Magistrate" means a Presidency Magistrate, a Magistrate of the first class or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure, ²[1898].

Act V of
1898.

4. (1) The ³[State Government] shall, by notification in the ⁴[Official Gazette], constitute a Commission, to be called the Bengal Smoke-nuisances Commission, to supervise and control the working of this Act.

Constitu-
tion of
Commis-
sion.

(2) The said Commission shall consist of a President and so many other members as the ⁵[State Government] may determine.

(3) ⁶[Not more than one-half of the members (including the President)] shall be officials nominated by the ⁷[State Government] ; and the remainder shall be non-officials nominated in such manner as the ⁸[State Government] may direct, by bodies or associations whose interests are likely to be affected by this Act.

(4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up by the ⁹[State Government] by notification in the ¹⁰[Official Gazette].

(5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.

5. (1) The ¹¹[State Government] may, by notification in the ¹²[Official Gazette], appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors of Smoke-nuisances as it may think fit.

Appoint-
ment of
Inspectors.

(2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.

¹This clause (4) was substituted for the original clause (4) by sec. 2 of the Bengal Smoke-nuisances (Amendment) Act, 1953 (West Ben. Act VIII of 1953).

²These figures were inserted by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³See foot-note 1 on page 216, ante.

⁴See foot-note 2 on page 216, ante.

⁵These words and brackets were substituted for the words "one-half of the members (exclusive of the President)" by sec. 8 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

[Ben. Act III

(Section 6.)

¹(3) Every Inspector appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Power to prohibit the erection or use of kilns or furnaces, or the manufacture of coke, in specified areas.

6. (1) The ²[State Government] may, by notification in the ³[Official Gazette], prohibit, within any specified area,—

- ⁴[(a) the erection or use of any specified class of brick, tile or lime-kilns, or,] ⁵[clamps for making bricks, or]
- (b) the erection ⁶[or use] of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, or for the conversion of pig-iron into wrought-iron, or
- (c) the manufacture of coke, in ovens, or with special appliances, or
- (d) the making of coke without ovens or special appliances :

Provided that where, prior to the issue of such notification, a license has been granted by the Chairman of the Calcutta Corporation under the provisions of Chapter XXXIII of the Calcutta Municipal Act, 1899⁷, for the erection of a furnace to be used for any of the purposes mentioned in clauses (a) and (b), or for the manufacture of coke as described in clauses (c) and (d), such notification shall not affect such furnace or such manufacture.

Ben. Act
III of 1899.

(2) If any kiln, ⁸[clamp] or furnace be erected ⁹[or used] in contravention of any notification issued under sub-section (1), clause (a) or clause (b), the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.

(3) If any person manufactures coke in contravention of any notification issued under sub-section (1), clause (c), he shall be liable to fine which may extend, on a first conviction, to two hundred and fifty rupees, and on any subsequent conviction to five hundred rupees.

¹ Sub-section (3) was inserted by sec. 4 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

² See foot-note 1 on page 216, *ante*.

³ See foot-note 2 on page 216, *ante*.

⁴ Clause (a) was substituted for the original clause by sec. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁵ These words were added by sec. 2(1) of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

⁶ These words were inserted by sec. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁷ Ben. Act III of 1899 was repealed and re-enacted by the Calcutta Municipal Act, 1933 (Ben. Act III of 1923) and again the latter Act was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Bengal Act XXXIII of 1951) and this reference should now be construed as a reference to the corresponding Chapter of the last mentioned Act—see sec. 10 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

⁸ This word was inserted by sec. 2(3) of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

of 1905.]

(Section 7.)

¹(4) If any person makes coke in or upon any building or land in contravention of any notification issued under sub-section (1), clause (d),—

(a) such person, and

(b) the owner (if he knowingly permits the coke to be made by such person) or the occupier of such building or land

shall be jointly and severally liable to a fine which may extend, on a first conviction, to twenty-five rupees, and on any subsequent conviction to fifty rupees; and the coke so made may be seized by an Inspector pending the order of the Magistrate.

¹(5) In any prosecution under sub-section (4), the Magistrate may, beside imposing a fine as aforesaid, record an order directing the confiscation of any coke seized as in that sub-section provided; and, in such a case, it shall be lawful for the Commission to dispose of the same in such manner as the ²[State Government] may, by rule made under section 10, prescribe.

¹(6) For the purposes of sub-section (4),—

(i) the expression “occupier” means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the building or land in respect of which the word is used, and includes an owner living in, or otherwise using, his own building or land; and

(ii) the expression “owner” includes the person for the time being receiving the rent of any building or land or of any part of any building or land, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, or who would so receive such rent if the building, land, or part thereof, were let to a tenant.

7. (1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting ³[or using] a kiln “[clamp] or furnace in contravention of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may by order direct such person to demolish the kiln “[clamp] or furnace within a period to be specified on the order.

Power to order demolition of kilns or furnaces erected or used within prohibited areas.

(2) If any person fails to demolish any kiln “[clamp] or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for special

¹Sub-sections (4), (5) and (6) were substituted for the original sub-section (4) by sec. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²See foot-note 1 on page 216, *ante*.

³These words were inserted by sec. 6 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁴This word was inserted by sec. 2 (2) of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

[Ben. Act III]

(Sections 8—9.)

reason, allow, he shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

Penalty when smoke is emitted to a greater extent than is permitted by rules.

8. (1) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extend, on a first conviction, to fifty rupees, on a second conviction to one hundred rupees, and on any subsequent conviction to two hundred rupees.

1* * * *

Submission of plans and penalty.

8A. (1) After the commencement of the Bengal Smoke-nuisances (Amendment) Act, 1916—

Ben. Act I of 1916.

- (a) no furnace, flue or chimney shall be erected, and
- (b) no furnace, flue or chimney, erected prior to the commencement of the said Act, shall be re-erected, altered or added to

otherwise than in accordance with plans approved by the Commission.

(2) In the event of any contravention of the provisions of sub-section (1), the owner of the furnace, flue or chimney, as the case may be, shall be liable to fine which may extend to one hundred rupees, and, if any such furnace, flue or chimney is used without the permission of the Commission, to a further penalty, not exceeding twenty rupees, for every day during which wrongful use continues.

Powers of Inspectors.

9. (1) An Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge—

- (a) enter and inspect, during working-hours, any building or place which contains a furnace, and inspect such furnace ;
- (b) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from any such furnace ; and
- (c) under the written authority of the Commission, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purpose of the experiment.

¹Sub-section (2) was repealed by sec. 7 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²Section 8A was inserted by sec. 8, *ibid.*

of 1905.]

(Section 10.)

(2) If any owner of a furnace in respect of which a direction is given under clause (c) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred rupees.

¹[3] Notwithstanding anything contained in sub-section (1), the Commission, and, in any urgent case, the President may, by order in writing, (which shall be produced on demand to the owner, occupier, manager, engineer or person in charge,) authorize any Inspector to enter and inspect without notice and at any time by day or by night any building or place in which the Commission or the President, as the case may be, has reason to believe that a furnace exists or that coke is being made, and to inspect such furnace, building or place :

Provided that if, in any such building, which is a private dwelling-house, there is an apartment in the actual occupancy of a woman who, according to a custom, does not appear in public, such Inspector shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing.]

²(4) Whenever the President makes any order under sub-section (3), he shall, as soon thereafter as conveniently may be, report the fact to the Commission.

10. (1) The ³[State Government] may * * * Rules after previous publication, make rules to carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of sub-section (1), such rules may—

- (a) regulate the transaction of business by the Commission ;
- (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties ;
- (c) prescribe a scale for the purpose of determining the density of smoke ;
- (d) prescribe the density of smoke that may be emitted from a furnace ;
- (e) prescribe the time during which smoke of such density may be emitted from a furnace ;

¹Sub-section (3) was inserted by sec. 9 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²Sub-section (4) was inserted by sec. 9, *ibid*.

³See foot-note 1 on page 216, *ante*.

⁴The words "with the previous sanction of the Governor General in Council, and" were repealed by sec. 10 (a) of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

[Ben. Act III]

(Section 10.)

¹[(f) regulate, with due regard to the safety of shipping, the emission of smoke from the furnances of vessels ;]

(g) prescribe the altitude below which smoke may not be emitted from a furnace ;

(h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution ; ^{2*}

(i) authorize the payment of a fee, not exceeding thirty-two rupees, to each or any member of the Commission attending a meeting of the Commission ;

³(j) regulate the disposal of coke confiscated under section 6, sub-section (5) ; ^{4*}

⁵(jj) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors ; and

⁶(k) prescribe a procedure to give effect to the provisions of section 8A.

(3) The date to be specified in accordance with clause (3) of section 24 of the Bengal General Clauses Act, 1899, as that after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

Ben. Act I
of 1899.

(4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (1), be referred to the Commission constituted under section 4, and the rule shall not be so published until the said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(5) All rules made under this section shall be published in the ⁷[Official Gazette]-

¹Clause (f) was substituted for the original clause by sec. 10(b) of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²The word "and" was repealed by sec. 10(c), *ibid.*

³These clauses(j) and (k) were inserted by sec. 10(d), *ibid.*

⁴The word "and" was omitted by sec. 8 (a) of the Bengal Smoke-nuisances (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵Clause (jj) was inserted by sec. 8(b), *ibid.*

⁶See foot-note 2 on page 216, *ante.*

of 1905.]

(Sections 11—13.)

11. A Magistrate may take cognizance of an offence against this Act only—

Cognizance
of offences.

- (a) upon a complaint made by, or with the written authority of, the Chief Inspector, and
- (b) within a period of ¹[four months] from the date of the commission of the offence.

²12. Where a person committing an offence under this Act is a company, a body corporate, a partnership, a Hindu joint family firm, or any association of individuals, every director, partner, manager, secretary, agent or other person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Offences
by compa-
nies, etc.

13. [*Repeal.*—*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*]

¹These words were substituted for the words "two months" by sec. 8 of the Bengal Smoke-nuisances (Amendment) Act, 1953 (West Ben. Act VIII of 1953).

²The original section 12 was omitted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. and this new sec. 12 was added by sec. 4 of the Bengal Smoke-nuisances (Amendment) Act, 1953 (West Ben. Act VIII of 1953).

Bengal Act VI of 1905

[The Calcutta and Suburban Police (Superannuation Fund)

Act, 1905]¹

REPEALED IN PART	...	...	Ben. Act I of 1939.
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	...	...	↓
			(b) The Adaptation of Laws Order, 1950.
			(27th December, 1905.)

An Act to abolish the Calcutta and Suburban Police Superannuation Fund.

Whereas it is expedient to abolish the Calcutta and Suburban Police Superannuation Fund ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta and Suburban Police (Superannuation Fund) Act, 1905. Short-title

2. [Repeal of enactments.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

3. All sums standing to the credit of the Calcutta and Suburban Police Superannuation Fund shall vest in ²[the State Government], to be applied, under rules made by the ³[State Government] in this behalf, towards the grant of pensions or gratuities to members of the Police force of the town or suburbs of Calcutta. Transfer and application of Calcutta and Suburban Police Superannuation Fund.

THE SCHEDULE.

[Enactments Repealed.]

Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Calcutta Gazette of 1905, Pt. IV, page 28 ; for Proceedings in Council, see *ibid*, Pt. IVA, pages, 201, 202, 303 and 214.

LOCAL EXTENT.—Since this Act has no local extent clause and only affects the Calcutta and Suburban Police, it extends only to Calcutta and its suburbs.

²These words were substituted for the words "His Majesty" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act V of 1909
(THE BENGAL EXCISE ACT, 1909.)

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OFFENCES AND PENALTIES.

- 46. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.
- 47. Presumption as to offence where possession is not satisfactorily accounted for.
- 48. Penalty for altering or attempting to alter any denatured spirit.
- 48A. Presumption as to offence under section 48 in certain cases.
- 48B. Presumption as to any spirit which contains any denaturant.
- 49. Penalty for adulteration by licensed manufacturer or vendor or his servant.
- 50. Penalty for fraud by licensed manufacturer or vendor or his servant.
- 51. Penalty for certain unlawful acts of licensed vendors or their servants.
- 52. Penalty for possession of intoxicant in respect of which an offence has been committed.
- 53. Penalty for consumption in chemist's shop, etc.
- 54. Penalty for certain acts by licensee or his servants.
- 55. Import, export, transport, manufacture, sale or possession by one person on account of another.

of 1909.]

SECTION.

- 56. Criminal liability of licensee for acts of servant.
- 57. Imprisonment under section 55 or section 56.
- 58. Penalty on Excise Officer making vexatious search, seizure, detention or arrest or refusing duty, or being guilty of cowardice.
- 59. Penalty for offences not otherwise punishable.
- 60. Penalty for contempt of Court.
- 61. Penalty for attempt to commit offence.
- 62. Enhanced punishment after previous conviction.
- 63. What things are liable to confiscation.
- 64. Confiscation by Magistrate or Collector.
- 65. Power to compound offences and to release property liable to confiscation.

CHAPTER IX.

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES AND PROCEDURE.

- 66. Power to enter and inspect, and power to test and seize, measures, etc.
- 67. Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.
- 68. Power to issue warrant of arrest.
- 69. Power to issue search warrant.
- 69A. Power of Collector or Magistrate to arrest or search without issuing a warrant.
- 70. Power of Excise Officer to search without a warrant.
- 71. Information and aid to Excise Officers.
- 72. Duty of owners and occupiers of land and other persons to give notice of unlicensed manufacture.
- 73. Power to Collector and certain Excise Officers to investigate offences.
- 74. Powers and duties of Collector and certain Excise Officers investigating offences.
- 75. Security and bail.
- 76. Production of articles seized and persons arrested.
- 77. Custody by Police of articles seized.
- 78. Reports of arrests, seizures and searches.
- 79. Execution of Collector's warrant.
- 80. Maximum period of detention.
- 81. Application of certain provisions of the Code of Criminal Procedure, 1898.
- 82. Magistrates having jurisdiction to try offences.
- 83. Initiation of certain prosecutions.
- 84. Bar to transfer of trial on application of accused.

CHAPTER X.

MISCELLANEOUS.

- 85. Power of State Government to make rules.
- 86. Further power of State Government to make rules.
- 87. (*Repealed.*)
- 88. Publication and effect of rules and notifications.
- 89. Recovery of dues.
- 90. Powers of State Government to exempt intoxicants from provisions of Act.
- 91. Bar to certain suits.
- 92. Limitation of suits and prosecutions.
- 92A. Bar to application of section 261 of the Bengal Municipal Act, 1884.
- 93. (*Repealed.*)

THE SCHEDULE.—(*Repealed.*)

Bengal Act V of 1909¹

(THE BENGAL EXCISE ACT, 1909.)

AMENDED

Ben. Act VII of 1922.
Act II of 1930.
Ben. Act IX of 1934.
Ben. Act VI of 1939.
West Ben. Act XII of 1947.
West Ben. Act XXVIII of 1948.
West Ben. Act II of 1954.

REPEALED IN PART AND AMENDED

{ Ben. Act VII of 1914.
Act XXXVIII of 1920.
Ben. Act I of 1939.

ADAPTED

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
(b) The Government of India (Adaptation of Indian Laws) Supplement Order, 1937.
(c) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
(d) The Adaptation of Laws Order, 1950.

[The 8th September, 1909.]

An Act to consolidate and amend the Excise Law in Bengal.

WHEREAS it is expedient to consolidate and amend the law in Bengal relating to the import, export, transport, manufacture, possession and sale of ²[alcoholic liquor] and intoxicating drugs ;

AND WHEREAS, the Acts mentioned in Part I of the Schedule having been passed by the Governor-General of India in Council, the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 and 59
Viot., o.
14.

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Excise Act, 1909 ;
- (2) It extends to the whole of ²[West Bengal] ; and

Short title,
extent
and com-
mence-
ment.

Page 231—

In the preamble, for the words "alcoholic liquor and intoxicating drugs", substitute the word "intoxicants".

and Reasons, see the
Select Committee,
see *ibid.*, Pt. IVA,
220.

(Substituted by West Ben. Act XXXIV of 1965, section 2.)

the words "intoxi-
Act, 1914 (Ben.

(No. 3, dated the 1st May, 1970.)

Article 8 of the Indian Independence (Adaptation of Bengal and Order, 1948.

(#) of
b Acts)

[Ben. Act V

(Chapter I.—Preliminary.—Section 2.)

(3) It shall come into force on such date¹ as the ²[State Government] may, by notification, direct.

De-
finitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “beer” includes ale, stout, porter and all other fermented liquor made from malt ;

3* * * * * *
4* * * * * *

(3) to “bottle” means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not ; and includes rebottling ;

(4) “Calcutta district” means—

(a) the area within the local limits of the ordinary original civil jurisdiction of ³[the High Court at Calcutta] ;

(b) the Suburbs of Calcutta, as for the time being defined by notification published under section 1 of the Calcutta Suburban Police Act, 1866, and the Municipalities of Howrah and Bally, or such part of those areas as the ³[State Government] may, by notification, direct, or, if the ³[State Government] by notification so directs, no part of any of those areas ; and

Ben Act
II of 1866.

(c) any other areas, in the vicinity of those referred to in sub-clauses (a) and (b), which the ³[State Government] may, by notification, declare to be included in the “Calcutta district” ;

6* * * * * *

(5) “Collector” means—

(i) in the Calcutta district, the person appointed under section 7, clause (b), to exercise all the powers and to perform all the duties of the Collector in that district, and

¹The 1st December, 1909—see the *Calcutta Gazette* of 1909, Pt. I, page 1710.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word ‘State’ was substituted for the word ‘Provincial’ by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³Clause (1A) was omitted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴Clause (g) of section 2 was repealed by sec. 5(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁵These words were substituted for the words the “High Court of Judicature at Fort William in Bengal” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁶Clause (4A) was omitted by sec. 40 of, and Schedule II to, the Dangerous Drugs Act, 1930 (II of 1930).

of 1909.]

(Chapter I.—Preliminary.—Section 2.)

(ii) elsewhere, the chief officer in charge of the revenue administration of a district ;

¹(6) “denaturant” means any substance prescribed by rule made in this behalf under clause (3) of section 86, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever ;

¹(6a) to “denature” means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 86, and “denatured spirit” means spirit so mixed ;

²(7) “excisable article” means—

(a) any alcoholic liquor for human consumption ; or

(b) any intoxicating drug ;

³(7a) “excise duty” and “countervailing duty” mean any such excise duty or countervailing duty, as the case may be, as is mentioned in ⁴[entry 51] of List II in the Seventh Schedule to ⁵[the Constitution] ;

(8) “Excise Commissioner” means the officer appointed under section 7, clause (a) ;

(9) “Excise Officer” means the Collector or any officer or other person appointed or invested with powers under section 7 ;

(10) “excise-revenue” means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs ;

⁶(11) “export” means to take out of ⁷[West Bengal] otherwise than across a customs frontier as ⁸defined by the Central Government ;

¹These clauses (6) and (6a) were substituted for the original clause (6) by sec. 6(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²This clause (7) was substituted for the former clause (7) (as substituted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937), by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³Clause (7a) was inserted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This word and the figures were substituted for the word and figures “item 40” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words “the Government of India Act, 1935.”, *ibid.*

⁶These clauses (11) and (12) were substituted for the original clauses (11) and (12) by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷See foot-note 3 on page 231, *ante*.

⁸For definition of frontier by the Central Government, see the Government of India, Ministry of Finance (Revenue Division) notification No. S. R. O. 1688 (122-Cus), dated 6. 8. 55, published in the Gazette of India of 1955, Part II, sec. 3, page 1521.

(Chapter I.—Preliminary.—Section 2.)

¹(12) "import" (except in the phrase "import into ²[* India]³") means to bring into ⁴[West Bengal] otherwise than across a customs frontier as defined by the Central Government ;

⁴(12ia) "India" means the territory of India excluding the State of Jammu and Kashmir.

⁵(12a) "intoxicant" means—

(i) any-liquor, or

(ii) any substance from which liquor may be distilled and which is declared by the State Government by notification in the *Official Gazette* to be an intoxicant for the purpose of this Act, or

(iii) any intoxicating drug ;

⁶(13) "intoxicating drug" means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as *bhanga*, *siddhi* or *ganja* ;

(ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport ;

(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drugs, or any drink prepared therefrom ; and

⁷(iv) any other intoxicating or narcotic substance or any fermenting agent which the ⁸[State Government] may specify in this behalf by notification, such substance or agent not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930.

II of 1930.

(14) "liquor" means ⁹[liquid consisting of or containing alcohol,] and includes spirits of wine, spirit, wine, *tari*, *pachwai*, beer,
¹⁰* * * * * and any substance which

¹See foot-note 6 on page 233, *ante*.

²The words "a Province of India" were originally substituted for the words "British India" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the words "a Province of" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³See foot-note 7 on page 233, *ante*.

⁴This clause was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵This clause was substituted for the clause, as inserted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, by sec. 2 of the Bengal Excise (Amendment) Act, 1954 (Ben. Act II of 1954.)

⁶Clause (13) was substituted for the original clause (13) by sec. 40 of the Dangerous Drugs Act, 1930 (II of 1930).

⁷Sub-clause (iv) was substituted for the original sub-clause (iv) by sec. 2 of the Bengal Excise (Amendment) Act, 1934 (Ben. Act IX of 1934).

⁸See foot-note 2 on page 232, *ante*.

⁹These words were substituted for the words "intoxicating liquor" by sec. 6 (5)(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

¹⁰The words "all liquids consisting of or containing alcohol" were repealed by sec. 8(5)(b), *ibid*.

(1) in clause (1), for the words "made from malt", substitute the words "whether solidified or not, made from malt and such other substances as the State Government may, by notification, specify in this behalf"; 3.)

(2) in clause (4),—

declare to be

(a) in sub-clause (b), omit the words beginning with "and the Municipalities of Howrah and Bally" and ending with "no part of any of those areas";

(b) after sub-clause (c), add the following proviso, namely:—

official, by which
pared (including
and the drawing

'Provided that the State Government may, by notification, declare to be excluded from the "Calcutta district" any area or any part of any area included therein under sub-clause (a), sub-clause (b) or sub-clause (c)';

ring, blending
ction of liquor

(3) in sub-clause (i) of clause (5), after the words and figure "person appointed under section 7," insert the word, figure and brackets "sub-section (2),";

(4) for clause (7), substitute the following clause, namely:—

r other grain,
uid obtained
s not include

'(7) "excisable article" means—

(a) any liquor for human consumption, or

, vessel, raft,

(b) any intoxicating drug, but does not include medicinal preparations or toilet preparations containing alcohol or any intoxicating drug;

nsfer other-

Explanation.—In this clause the expressions "medicinal preparations" and "toilet preparations" have the same meaning respectively as in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955';

institute,
er name
Act 16 of
1955. ned to be

(5) in clause 8, after the words and figure "appointed under section 7," insert the word, figure and brackets "sub-section (2),";

alcohol obtained

(6) in clause (10), for the words "liquor or intoxicating drugs", substitute the word "intoxicants";

ted juice drawn

(7) in clause (12), omit the words "(except in the phrase "import into India")";

of palm tree ; and

e place to another

(8) in sub-section (ii) of clause (12a),—

(a) for the words "may be distilled", substitute the words "may be manufactured";

on of "intoxicating
! to, the Dangerous

(b) omit the words "in the Official Gazette";

(9) to clause (14), add the following Explanation, namely:—

'Explanation.—In this clause "spirit of wine" means plain spirit of or above such strength as the State Government may, by notification, specify';

article" by paragraph
(Adaptation of Indian

(10) after clause (15), insert the following clause, namely:—

(15) by sec. 6(6) of
[of 1914).

'(15a) "notification" means a notification published in

as Bengal Excise (West
of 1948).

[Ben. Act V

(Chapter I.—Preliminary.—Sections 4—6.)

Power to declare what shall be deemed to be "country liquor" and "foreign liquor", respectively.

Definition of retail and wholesale.

Saving of certain Acts.

4. The ¹[State Government] * * * may, by notification, declare what, for the purposes of this Act, or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor", respectively :

* *

5. (1) The ⁴[State Government] may, by notification, declare with respect either to the whole of ⁶[West Bengal] or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any ⁹[intoxicant] shall, for the purposes of this Act, be the limit of a retail sale.

(2) The sale of any ⁹[intoxicant] in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a sale by wholesale.

6. (1) Nothing contained in this Act shall affect the provisions of—

(a) the Calcutta Suburban Police Act, 1866, or

(b) the Calcutta Police Act, 1866, or

(c) the Sea Customs Act, 1878⁷, or

(d) the Cantonments Act ⁸[1924], or

(e) the Indian Tariff Act, ⁹[1934].

(2) All references to Act XXI of 1856 in the said Calcutta Suburban Police Act, 1866, and all references to Act XI of 1849 in the said Calcutta Police Act, 1866, shall be construed as

Ben. Act II of 1866.

Ben. Act IV of 1866.
VIII of 1878.

II of 1924.

XXXII of 1934.

Page 236—

Omit sub-section (2) of section 6.

(Omitted by West Ben. Act XXXIV of 1965, section 4.)

Government of India"
Devolution Act, 1920

(No. 3, dated the 1st May, 1970.)

and Schedule IV to,
Order, 1937.

"The words "Local Government" were originally substituted for the word "Board" by sec. 5(2) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). The words "Provincial Government" were then substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵ See foot-note 3 on page 231, ante.

⁶ See foot-note 2 on page 235, ante.

⁷ The Sea Customs Act, 1878 (VIII of 1878) has been repealed by the Customs Act, 1962 (52 of 1962).

⁸ These figures were substituted for the figures "1889" by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

⁹ These figures were substituted for the figures, brackets and words "1894 (except section 6 thereof)", *ibid*.

**(Chapter II.—Establishments, Control, Appeal and Revision.—
Section 7.)**

ESTABLISHMENTS, CONTROL, APPEAL AND REVISION.

Establishments and delegation and withdrawal of powers.

Page 237—

In section 7,

(1) in sub-section (1), for the words "administration of the Excise Department", substitute the words "administration of the provisions of this Act and the rules thereunder":

(2) in sub-section (2),—

(a) in clause (a), for the words "administration of the Excise Department", substitute the words "administration of the provisions of this Act and the rules thereunder";

(b) after clause (a), insert the following clause, namely:—
“(aa) appoint one or more persons to be members of such classes, and duties, as the

“(aa) appoint one or more persons to be an Additional Excise Commissioner or Additional Excise Commissioners to exercise such powers and perform such duties conferred on the Excise Commissioner by or under this Act as the State Government may, by notification, direct and references to the Excise Commissioner in this Act shall, in respect of such powers and duties, be deemed to include references to an Additional Excise Commissioner ;” ;

(3) in clause (c), for the words "of the Excise Department", substitute the words "for the administration of the provisions of this Act and the rules thereunder".

(Substituted and inserted by West Ben. Act XXXIV of 1965, section 5.)

(No. 3, dated the 1st May, 1970.)

² See foot-note 3 on page 231 *ante*.

^aThis word was substituted for the word "section" by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1936 (Ben. Act I of 1939).

"The words "servant of the Crown" were originally substituted for the words "Government officer" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws)-Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "the Board" in clauses (e) and (g) of sec. 7 (2) were repealed by sec. 5(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Page 238—

(Chapter II.—1 For section 8, substitute the following sections, namely:—

Chapter III.—

“Control, appeal and revision. 8. (1) In doing anything or taking any action under this Act,—

any
notifi
ed up

(a) the Collector shall be subject to the control of the Excise Commissioner and of the State Government and, in such matters as the State Government may direct, also of the Commissioner of the Division; and

(b) the Excise Commissioner shall be subject to the control of the State Government.

Control,
appeal
and
revision.

8. (1) The C
be subject to the
in such matters
also to the contr

(2) Orders pass
under shall be a
under such proce
section 85, clause (

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rules made under section 85, sub-section (2); clause (c).

(3) The ³[State
the Collector, the E
a Division ⁴[or by a
ate authority under
* * *

(3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made under section 85, sub-section (2), clause (c).

Correction 8A. Clerical or arithmetical errors in any order passed under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by the officer by whom or the authority by which the order was passed.”

IMPO

Restrictions on
import.

9. (1) No ⁶[int

(Substituted by West Ben. Act XXXIV of 1965, section 6.)

(a) the ²[State
general

(No. 3, dated the 1st May, 1970.)

(b) such cond
impose

In section 9,—

(c) the duty
paid, o
thereof

(1) to sub-section (1), add the following proviso, namely:—

“Provided that the State Government may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this sub-section.”;

(2) omit sub-sections (2) and (3),

(Added and omitted by West Ben. Act XXXIV of 1965, section 7.)

¹The words “it
the Bengal Excise (An

²See foot-note 2 on

³See foot-note 4 on

⁴The words, figure
the First Schedule to
1947 (West Ben. Act XI

⁵The proviso to sub-section (1) of section 9, (No. 3, dated the 1st May, 1970.)
IV of the Government of India (Adaptation of Indian Laws) Order, 1950, was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁶See foot-note 2 on page 235, ante.

⁷These words and figure were substituted for the words and figures “imposed under section 27” by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

of 1909.]

(Chapter III.—Import, Export and Transport.—Sections 10, 11.)

(2) Sub-section (1) shall not apply to any article which has been imported into ¹[* * * India] ²[if—

XXXII of
1984.
VIII of
1878.

(i) the duty (if any) imposed on such importation under the Indian Tariff Act, ³1934, or the Sea Customs Act, 1878⁴, has been paid, or

(ii) a bond has been executed for the payment of such duty.]

(3) Clauses (a) and (b) of sub-section (1) shall not apply to liquor manufactured in ¹[* * * India] and declared under section 4 to be foreign liquor.

10. No ⁵[intoxicant] shall be exported or transported unless—

Restriction on export or transport.

(a) the duty (if any) ⁶[payable under Chapter V], or

(b) if the article was previously imported, the duty (if any) imposed on its importation under the Indian Tariff Act, ⁸[1934], or the Sea Customs Act, 1878⁴,

has been paid, or a bond has been executed for the payment thereof :

Provided that the ⁷[State Government] may, subject to such conditions (if any) as it thinks fit to impose, exempt any ⁵[intoxicant] from the provisions of this section

to

Page 239—

For section 10, substitute the following section, namely:— * prohibit the

Restriction on export or transport.

10. No intoxicant shall be exported or transported unless—

Power to prohibit import, export or transport.

(a) the duty (if any) payable under Chapter V has been paid, or a bond has been executed for the payment thereof ; and

(b) such conditions (if any) as the State Government may impose, have been satisfied:

Provided that the State Government may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this section."

substituted for the 1 the Schedule to, (cts) Order, 1948, paragraph 8 of, 1950.

with the word "it" words and figures 1 Tariff Act, 1894, 1895 (Amendment)

(Substituted by West Ben. Act XXXIV of 1965, section 8.)

814" by section 2 sending Act, 1988

(No. 3, dated the 1st May, 1970.)

Page 239—

In clause (b) of section 11, after the words "intoxicant", add the words "either absolutely or in such circumstances as it may, by notification, specify".

(Added by West Ben. Act XXXIV of 1965, section 9.)

ment of India" were dution Act, 1920

(No. 3, dated the 1st May, 1970.)

²¹The proviso to section 11 was omitted by paragraph 8 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1987,

[Ben. Act V

(Chapter III.—Import, Export and Transport.—Chapter IV.—
Manufacture, Possession and Sale.—Sections 12, 13.)

Passes for
import,
export or
transport.

12. (1) No ¹[intoxicant] exceeding such quantity as the
²[State Government Page 240—“... notification either generally
or for any specific
transported, except

Omit the proviso to sub-section (1) of section 12.

Provided that,
than denatured spirit
the ³[State Govern
respect to any local area.

(Omitted by West Ben. Act XXXIV of 1965, section 10.)

(No. 3, dated the 1st May, 1970.)

(2) The passes required by sub-section (1) may be granted by
the Collector.

(3) Such passes may be either general for definite periods and
particular kinds of ⁴[intoxicants], or special for specified occa-
sions and particular consignments only.

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

License
required
for manu-
facture.

13. (a) No ¹[intoxicant] shall be manufactured,

(b) no hemp plant (*Cannabis sativa*) shall be cultivated,

(c) no portion of the hemp plant (*Cannabis sativa*) from
which an intoxicating drug can be manufactured or produced
shall be collected,

(d) no liquor shall be bottled for sale,

(e) no distillery or brewery shall be worked, and

(f) no person shall use, keep or have in his possession any
materials, still, utensil, implement or apparatus whatsoever for
the purpose of manufacturing any ¹[intoxicant] other than *tari*,
except under the authority and subject to the terms and condi-
tions of a license granted in that behalf by the Collector :

Provided that any *tari*-producing tree may be tapped, and *tari*
may be drawn from any tree, without a license under this section,
by the person in possession of the tree—

(i) for the purpose of being used in the manufacture of *gur*
or molasses, or

⁴[(ia) for the purpose of being used solely for the pre-
paration of food for domestic consumption, and not—

(I) as an intoxicant, or

(II) for the preparation of any intoxicating article, or

¹See foot-note 2 on page 235, *ante*.

²See foot-note 2 on page 232, *ante*.

³This word was substituted for the words “excisable articles” by paragraph
8 of, and Schedule IV to the Government of India (Adaptation of Indian
Laws), Order, 1937.

⁴This clause (ia) in the proviso to sec. 13 was inserted by sec. 8 of the Bengal
Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter IV.—Manufacture, Possession and Sale.—Sections 14, 15.)

(III) for the preparation of any article for sale, or]

(ii) up to a limit of four seers, for the domestic consumption of the said person.

14. (1) Notwithstanding anything contained in the proviso to section 13,—

Drawing of tari in notified areas.

(a) no tari-producing tree shall be tapped, and

241—

For section 14, substitute the following section, namely:—

"Drawing or possession of tari in notified areas.

14. Notwithstanding anything elsewhere contained in this Act, in any area specified by the State Government by notification in this behalf,—

[State Government and subject to that behalf by the

(a) no tari-producing tree shall be tapped,

(b) no tari shall be drawn from any tree, and

(c) no person shall have any tari in his possession, except under and in accordance with the terms and conditions of a notification issued in this behalf by the State Government or of a license granted in that behalf by the Collector."

illegality of manufacture [State Government] and effect as a section (1) of this

(Substituted by West Ben. Act XXXIV of 1965, section 11.)

specified by notification [Government] may, by not apply to trees conditions as the

(No. 3, dated the 1st May, 1970.)

[Excise Commissioner] may prescribe.

15. (1) The Excise Commissioner may,—

(a) subject to any restrictions imposed by the [State Government], establish, or authorize the establishment of, distilleries or breweries, in which liquor may be manufactured under a license granted under section 13;

Establishment of distilleries, breweries or warehouses.

(b) discontinue any such distillery or brewery ;

Page 241—

In clause (c) of sub-section (1) of section 15, for the words "may be deposited or kept without payment of duty", substitute the words "in respect whereof duty payable under section 27 or permit or pass fee payable under section 38 has not been paid, may be deposited or kept".

of, warehouses, deposited and kept

(Substituted by West Ben. Act XXXIV of 1965, section 12.)

presaid shall be of, the Excise

(No. 3, dated the 1st May, 1970.)

See foot-note 1 on page 232, ante.

These words were substituted for the word "Board" by sec. 5(s) of the Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

See foot-note 2 on page 235, ante.

[Ben. Act V

(Chapter IV.—Manufacture, Possession and Sale.—Sections 16-18.)

License
required
for de-
positing or
keeping
intoxicant
in ware-
house or
other place
of storage.

16. No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any ¹[intoxicant] in any warehouse or other place of storage established, authorized or continued under this Act.

Payment
of duty on
removal
from dis-
tillery,
brewery,
warehouse
or other
place of
storage.

17. No ¹[intoxicant] shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorize¹ as continued under this Act unless the duty (if any) ²[payable Page 242—
been executed for In section 17,—

(1) after the words "unless the duty", insert the words "or fee";

(2) after the word and figure "Chapter V", insert the words and figures "or Chapter VI".

Possession
of intoxi-
cants not
obtained
from a
licensed
vendor.

18. (1) No pe
cant] which has no
same.

(Inserted by West Ben. Act XXXIV of 1965, section 13.)

(No. 3, dated the 1st May, 1970.)

(2) Sub-section (1) shall not apply to—

(a) any ¹[intoxicant] lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or

(b) any ¹[intoxicant] lawfully in the possession of a licensed vendor of the same, or

(c) any ¹[intoxicant] in the possession of a person who has lawfully imported it, or who is authorized by the Collector to possess it, or

(d) any foreign liquor in the possession of any common carrier or warehousman as such, or purchased at a sale authorized by clause (a) of proviso (3) to section 20, or

(e) *tari* intended to be used in the manufacture of *gur* or molasses, or

(f) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or

¹ See foot-note 2 on page 235, ante.

² These words and figures were substituted for the words and figures "imposed under section 37" by paragraph 8 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1987.

of 1909.]

(Chapter IV.—Manufacture, Possession and Sale.—Section 19.)

- ¹(ff) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—
- (i) ²[as an intoxicating article], or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale, or
- (g) *tari*, up to a limit of four seers, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
- (h) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his license.

19. (1) No person not being licensed to manufacture, cultivate, collect or sell any ³[intoxicant] shall have in his possession any quantity of any ³[intoxicant] in excess of such quantity as the ⁴[State Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

Possession of intoxicants generally.

(2) Sub-section (1) shall not apply to—

- (a) any foreign liquor (other than denatured spirit) which is of warehouse-

Pages 243-244—

In section 19,—

- (1) in sub-section (2), for the words, brackets and figure "Sub-section (1) shall not apply to—", substitute the following words, brackets and figures, namely:—
"Save as the State Government may by rule made under section 85 otherwise provide, sub-section (1) shall not apply to—";
- (2) in sub-section (3), for the words "A licensed vendor", substitute the words "A person licensed to manufacture, cultivate, collect or sell any intoxicant";
- (3) for sub-section (4), substitute the following sub-section, namely:—
"(4) Notwithstanding anything contained in the foregoing sub-sections, if the State Government thinks fit so to do on the ground of health, morality or public order, it may, by notification, prohibit, either absolutely or subject to such conditions as it may prescribe, the possession in the whole of West Bengal or in any specified local area of any intoxicant by all persons generally or by any specified class or classes of persons."

used by any person and not
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preparation of
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icant" by para-
tation of Indian

Schedule to, the
)).
Amendment) Act,

(Substituted by West Ben. Act XXXIV of 1965, section 14.)

(No. 3, dated the 1st May, 1970.)

(Chapter IV.—Manufacture, Possession and Sale.—Section 20.)

(3) A licensed vendor shall not have in his possession at any place other than that authorised by his license any quantity of any ¹[intoxicant] in excess of such quantity as the ²[State Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

(4) Notwithstanding anything contained in the foregoing sub-sections, the ³[State Government] may, by notification, prohibit the possession by any person or class of persons, either in ⁴[West Bengal] or in any specified local area, of any ¹[intoxicant] either absolutely, or subject to such conditions as it may prescribe.

License
required
for sale.

20. No ¹[intoxicant], and no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

Provided as follows :—

(1) a license for sale in more than one district shall be granted only by the Excise Commissioner ⁵[or by a Collector specially authorized in that behalf by the Excise Commissioner] ;

⁶(1a) a license for sale granted under the Excise law in force in any other ⁷[State] may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act ;

(2) a cultivator or owner of any hemp plant (*Cannabis sativa*) may sell, without a license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same ;

(3) no license shall be required for any of the following sales ; namely :—

(a) the sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease ;

¹ See foot-note 2 on page 285, *ante*.

² See foot-note 4 on page 286, *ante*.

³ See foot-note 2 on page 282, *ante*.

⁴ See foot-note 3 on page 281, *ante*.

⁵ These words were added to proviso (1) of sec. 20 by sec. 11(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶ Clause 1(a) was inserted by sec. 11(b), *ibid*.

⁷ This word was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale.*—Sections 21, 22.)

- (b) the sale of *tari*, ¹[lawfully possessed] by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell *tari* ;
- (c) the sale of *tari*, ¹[lawfully possessed and] intended to be used in the manufacture of *gur* or molasses, or
- (d) the sale of *tari* ²[lawfully possessed and] intended to be used in the manufacture of bread to a person holding a permit to use *tari* for the purpose of making bread ;
³[or
- (e) the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not—
 - (i) ⁴[as an intoxicating article], or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale].

21. Within the limits of any military cantonment, and within such distance from those limits as the ⁵[Central Government] may in any case prescribe, no license for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

22. (1) The ⁶[State Government] may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege—

- (a) of manufacturing, or supplying by wholesale, or
- (b) of manufacturing, and supplying by wholesale, or
- (c) of selling, by wholesale or retail, or
- (d) of manufacturing or supplying by wholesale and selling retail, or
- (e) of manufacturing and supplying by wholesale and selling retail,

any country liquor or intoxicating drug within any specified local area :

Manufacture and sale of liquor in or near cantonments.

Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.

¹The words "lawfully possessed" were inserted in proviso (3)(b) of sec. 20 by sec. 11 (c) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²The words "lawfully possessed and" were inserted in proviso 3(c) and (d) of sec. 20 by sec. 11(d), *ibid.*

³The portions enclosed within square brackets beginning with the word "or" and containing clause (e) were added by sec. 11(e), *ibid.*

⁴See foot-note 2 on page 243, *ante*.

⁵These words were substituted for the words "Local Government" by paragraph 8 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶See foot-note 2 on page 232, *ante*.

[Ben. Act V

(Chapter IV.—Manufacture, Possession and Sale.—Sections 23—25.)

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector ¹[or the Excise Commissioner].

Transfer of
exclusive
privilege.

23. (1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorised, by a condition made under that section, to do so.

(2) See Page 246—

approve In section 24,—

(3) In clause (a), for the words "such measures, weights and instruments as the Excise Commissioner may prescribe", substitute the words "such standard measures, standard weights, measuring instruments and weighing instruments, duly stamped and verified in accordance with the provisions of the West Bengal Standards of Weights and Measures (Enforcement) Act, 1958, and such other instruments as the Excise Commissioner may prescribe";

Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors.

24. under a (a)

(2) in clause (b), for the words "Excise Officer duly empowered by the Collector in this behalf", substitute the words, letters, figures and brackets "officer referred to in clause (a), clause (b) or clause (c) of section 66".

West Ben.
Act XXIII
of 1958.

(Substituted by West Ben. Act XXXIV of 1965, section 15.)

(No. 3, dated the 1st May, 1970.)

Employment of children or women by licensed vendors.

25. (1) No person shall employ or permit the employment of children or women in any part of such premises during the hours of business, by the public.

(2) No person shall employ or permit the employment of children or women in any part of such premises during the hours of business, by the public.

(3) No person shall employ or permit the employment of children or women in any part of such premises during the hours of business, by the public.

In section 25,—

(1) in sub-section (1), for the words "child under the age of fourteen years", substitute the words "person under the age of twenty-one years";

(2) in sub-section (2)—

(a) after the words "foreign liquor", insert the words "or country spirit",

(b) omit the words "without the previous written permission of the Excise Commissioner,"

(c) after the words "such liquor", insert the words "or spirit";

(3) omit sub-section (3);

(4) omit sub-section (4).

¹These words were added in 1914 (Ben. Act VII of 1914).

²See foot-note 2 on page 247.

³These words were substituted, inserted and omitted by West Ben. Act XXXIV of 1965, section 16.)

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale*.—Chapter V.—*Duty*.—Sections 26, 27.)

employ or permit to be employed, either with or without remuneration, any woman, in any part of such premises in which such liquor is consumed by the public.

(3) The ¹[State Government] may, by notification, declare that sub-section (2) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.

(4) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified or withdrawn.

26. (1) The District Magistrate or a Subdivisional Magistrate, or (in Calcutta) the Chief Presidency Magistrate or the Commissioner of Police, may, by notice in writing to the licensee require that any shop in which any ²[intoxicant] is sold shall be closed at such times or for such period as such Magistrate or Commissioner of Police may think necessary for the preservation of the public peace.

Power to close shops temporarily.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any ²[intoxicant] is sold, any Magistrate, or any Police Officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When any Magistrate or Police Officer makes a direction under sub-section (1) or sub-section (2), he shall forthwith inform the Collector of his action and his reason therefor.

CHAPTER V.

DUTY.

27. (1) ³[An excise duty or a countervailing duty, as the case may be,] at such rate or rates as the ¹[State Government] may direct, may be imposed, either generally, or for any specified local area, on—

- (a) any excisable article imported, or
- (b) any excisable article exported, or
- (c) any excisable article transported, or
- (d) any excisable article (other than *tari*) manufactured under any license granted in respect of clause (a) of section 13, or
- (e) any hemp plant (*Cannabis sativa*) cultivated, or any portion of such plant collected, under any license granted in respect of clause (b) or clause (c) of section 13, or

Power to impose duty on import, export, transport and manufacture.

¹ See foot-note 2 on page 232, *ante*.

² See foot-note 2 on page 235, *ante*.

³ These words were substituted for the words "A duty" by part of Schedule IV to, the Government of India (Adaptation of Laws) Order, 1937.

Page 248—

(Chapter V.—Duty.—Section 28.)

In section 27,—

(1) in the Explanation to sub-section (1), after the words "different rates", insert the words "according to the purposes for which such article is intended to be used,";

(2) in sub-section (2),—

(a) omit the words "or a countervailing duty, as the case may be,";

(b) omit the word, figure and brackets sub-section (1)".

(3) omit sub-section (3).

(Inserted and omitted by West Ben. Act XXXIV of 1965 section 17.)

(No. 3, dated the 1st May, 1970.)

the Indian Tariff Act, ⁵[1934], or the Sea Customs Act, 1878⁶, has been paid, or

(ii) a bond has been executed for the payment of such duty ;] ^{7*}

Ways of
levying
such duty.

28. Subject to any rules made under section 86, clause (12) any duty imposed under section 27 may be levied in any of the following ways :—

(a) on an excisable article imported,

(i) by payment (upon or before importation) in ⁹[West Bengal] or in the ¹⁰[State] or territory from which the article is brought, or

¹These words were substituted for the words "A duty" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on page 239, ante.

³The word "British" was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws, Order 1950.

⁴The portions enclosed within square brackets beginning with the word "if" and containing sub-clauses (i) and (ii) were substituted for the words and figures "and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878," by sec. 7 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁵See foot-note 3 on page 239, ante.

⁶See foot-note 7 on page 236, ante.

⁷The word "and" was repealed by sec. 8 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

⁸Clause (ii) was omitted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

⁹See foot-note 8 on page 231, ante.

¹⁰This word was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XXXII of
1934.
VIII of
1878.

of 1909.]

(Chapter V.—Duty.—Section 28.)

- (iii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act ;
- (b) on an excisable article exported,—
 - by payment in ¹[West Bengal] or in the ²[State] or territory to which the article is sent ;
- (c) on an excisable article transported,—
 - (i) by payment in the district from which the article is sent, or
 - (ii) by payment upon issue for sale from a warehouse established, authorized, or continued under this Act ;
- (d) on intoxicating drugs manufactured, cultivated or collected,—
 - (i) by a rate charged upon the quantity manufactured under a license granted in respect of the provisions of section 13, clause (a), or issued for sale from a warehouse established, authorized or continued under this Act, or
 - (ii) by ³[a rate assessed on the area covered by, or on the quantity or outturn of, the crop cultivated or collected, under,] a license granted in respect of the provisions of section 13, clause (b) or clause (c) ;
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorized or continued under this Act,—
 - (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
 - (ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the ⁴[State Government] may prescribe ; and
- (f) on *tari* drawn under a license granted under section 14, sub-section (1),—by a tax on each tree from which the drawing of *tari* is permitted :

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from such warehouse :

¹ See foot-note 3 on page 231, *ante*.

² See foot-note 9 on page 248, *ante*.

³ These words were substituted for the words and brackets "an acreage rate levied on the cultivation or collection of the hemp plant (*Cannabis Sativa*) under" by sec. 18 of the Bengal Excise (Amendment) Act. 1914 (Ben. Act VII of 1914).

⁴ See foot-note 2 on page 232, *ante*.

[Ben. Act V

(Chapter V.—Duty.—Chapter VI.—Licenses, Permits and Passes.—Sections 29—30.)

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the ¹[Excise Commissioner] may prescribe.

Payment for grant of exclusive privilege.

Saving for duties being levied at commencement of the Constitution.

29. Instead of, or in addition to, any duty leviable under this Act, the ²[State Government] may accept payment of a sum in consideration of the grant of any exclusive privilege under section 22.

³29A. (1) Until provision to the contrary is made by ⁴[Parliament] the State⁵ Government may continue to levy any duty to which this section applies which it was lawfully levying immediately before the commencement of ⁶[the Constitution], under this Chapter as then in force.

(2) The duties to which this section applies are—

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act ;
- (b) any duty on an excisable article produced outside India and imported into the ⁷[State] whether across a customs frontier as ⁸defined by the Central Government or not ;
- ⁹(c) any duty on medicinal or toilet preparations containing alcohol.

(3) Nothing in this section shall authorise the levy by the ¹⁰State Government of any duty which, as between goods manufactured or produced in the ⁷[State] and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the ⁷[State], discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

CHAPTER VI.

LICENSES, PERMITS AND PASSES.

Preparation of list of places for which it is proposed to grant licenses for the retail sale of spirit.

30. Before the expiration of every period for which existing licenses for the retail sale of spirit are in force, the Collector shall prepare a list, in a form prescribed by the ¹[Excise Commis-

¹The words "Excise Commissioner" in section 28 (second proviso) and in section 30 were substituted for the word "Board" by sec. 5(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act, VII of 1914).

²See foot-note 2 on page 232, *ante*.

³Section 29A was inserted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws Order), 1937.

⁴This word was substituted for the words "the Central Legislature" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶These words were substituted for the words "Part III of the Government of India Act, 1935" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁷See foot-note 9 on page 248, *ante*.

⁸See foot-note 8 on page 233, *ante*.

⁹Clause (c) was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1909.]

Page 251.

In section 31,— (Chapter VI.—Licenses, Permits and Passes.—Sections 31—33.)

(1) in sub-section (1)— ^{giving what licenses it is proposed to grant for the} vendor's premises,

(a) in clause (a), for the words "of spirit thereat, or in the vicinity, for the next period of settlement ;", ^{substitute the words "thereat, or in the vicinity, during the next period of settlement, of spirit for consumption on the vendor's premises ;";} ^{in the site of each notice to the effect}

(b) in clause (b)— ^{use for the retail sale}

(i) for the words "used for the retail sale of spirit," ^{substitute the words "used for the retail sale of spirit for consumption on the vendor's premises,"} ^{it is not at the time}

(ii) for the words "of spirit thereat, or in the vicinity, for the next period of settlement," ^{substitute the words "thereat, or in the vicinity, during the next period of settlement, of spirit for consumption on the vendor's premises,"} ^{at a license for the}

(iii) after the words "beat of drum", ^{add the words} "or in such other manner as the Collector may think fit"; ^{Municipality ¹[or, in}

(c) in clause (c), for the words "Chief Executive Officer of the Corporation", ^{substitute the words "Commissioner of the Corporation of Calcutta";} ^{ereof, to be published}

(d) in clause (d), after the words and figures "rule made under section 85," ^{insert the word, figure and brackets "sub-section (2)."} ^{s may be prescribed}

(2) in sub-section (2), for the words "Chief Executive Officer", ^{substitute the word "Commissioner".} ^{he shall—}

substituted, added and inserted by West Ben. Act XXXIV of 1965, section 18.) ^{as conspicuously affixed at}

(No. 3, dated the 1st May, 1970.)

Page 251—

In section 32, after the words and figures "rule made in this behalf under section 85," ^{insert the word, figure and brackets "sub-section (2)."} ^{as may be pre-}

(Inserted by West Ben. Act XXXIV of 1965, section 19.) ^{lined in any list}

(No. 3, dated the 1st May, 1970.)

(a) persons paying municipal rates and residing in any Municipality to which such proposal relates, ^{or in Calcutta or, if any such Municipality is divided into Wards, in the Ward to which such proposal relates or in any Ward adjoining such Ward ; or}

¹These words were inserted by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²These words were substituted for the words and brackets "or (if any such Municipality is divided into Wards)", *ibid*,

Publica-
tion of
such list.

Time for
preparation
and publica-
tion of
such list.

Submission
of objec-
tions and
opinions to
Collector.

In section 33,—

(Chapter I) (1) in sub-section (1)—

(b) (in the any or r prop (a) after the words and figures "rule made in this behalf under section 85," insert the word, figure and brackets "sub-section (2)," ;

(b) for clause (a), substitute the following clause, namely:—

(c) the Dist

"(a) persons residing—

“(2) Such provided that in the option of the Municipality poration, as the

(i) in any municipality to which such proposal relates, or if any such municipality is divided into Wards, in the Ward to which such proposal relates or in any Ward adjoining such Ward ; or

(ii) in any Ward of Calcutta to which such proposal relates or in any Ward adjoining such Ward ; or” ;

(3) Every Executive Office extract has been to the Collector behalf under sec

(2) in sub-section (2), for the words “Chief Executive Officer of the Corporation”, substitute the words “Commissioner of the Corporation of Calcutta” ;

(i) all object which Chief perso

(3) in sub-section (3)—

(a) for the words “Municipality or the Chief Executive Officer”, substitute the words “Municipality or the Commissioner” ;

(ii) any opin Calcu tion, or th on th

(b) after the words and figures “sent under section 31,”, insert the word, figure and brackets “sub-section (1),” ;

(c) after the words and figures “rule made in this behalf under section 85,”, insert the word, figure and brackets “sub-section (2),” ;

(d) in clause (i),—

(i) for the words “Chief Executive Officer”, substitute the words “Commissioner of the Corporation of Calcutta”, and

(ii) omit the words “from persons paying municipal rates,” ;

(e) in clause (ii), for the words beginning with “Chief Executive Officer” and ending with “the Chairman or”, substitute the words “Commissioner or, in the case of a Municipality, the Chairman of”.

Grant of licenses by Collector, and submission of list, objections and opinions to Excise Commissioner.

34. (1) After and opinions s consider the said shall decide for shall be grant accordingly.

(2) The Co as so revised, an opinion,—

(a) in the ca Comr the E

(b) in the ca Comr

(3) The Con objections and o with his own Excise Commissi

(Inserted, substituted and omitted by West Ben. Act XXXIV of 1965, section 20.)

(No. 3, dated the 1st May, 1970.)

¹These words were inserted by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1988 (Ben. Act I of 1989).

²Sub-section (2) was substituted for the original sub-section (2), *ibid.*

³See foot-note 1 on page 251, *ante*.

of 1909.]

(Chapter VI.—Licenses, Permit and Passes.—Sections 35—37.)

Page 253—

35. The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector; and, notwithstanding, the order shall be final:

Finality of decision of Excise Commissioner or State Government.

(1) for the words and figure "notwithstanding anything contained in section 8," substitute the words and figure "subject to the provisions of section 8,";

(2) in clause (b) of the proviso, for the words "Chief Executive Officer", substitute the word "Commissioner".

[Chief Executive Officer or the Corporation] the [said Corporation] of sub-section (3) a meeting of the

(Substituted by West Ben. Act XXXIV of 1965, section 21.)

Commissioner to the final.

Page 253—

(No. 3, dated the 1st May, 1970.)

In section 35A, for the words and figures "section 3 of the Calcutta Municipal Act, 1923", substitute the words and figures "section 5 of the Calcutta Municipal Act, 1951, but does not include any area included within Calcutta under the provisions of section 592 or section 594 of that Act".

session "Calcutta" of section 3 of the

Definition.

(Substituted by West Ben. Act XXXIV of 1965, section 22.)

to licenses for the of licenses for the der made by the other "[intoxicant]

Application of sections 80 to 85 to licenses for retail sale of intoxicants other than spirit.

(No. 3, dated the 1st May, 1970.)

Page 253—

In section 36, for the words "in any local area specified", substitute the words "in West Bengal generally or in any local area as may be specified".

in case any license

Exemption of certain licenses from section 80 to 86A.

(Substituted by West Ben. Act XXXIV of 1965, section 23.)

[intoxicant], during months; or

(No. 3, dated the 1st May, 1970.)

any denatured spirit;

Page 253—

(c) to any person, for the retail sale of any "[intoxicant], in substitution for a license which has been cancelled or

(1) in clause (b), omit the word "retail";

(2) in clause (c)—

(a) after the words "in substitution for", insert the words "by sec. 2 of, and for the remainder of the period of,";

(b) after the words "has been cancelled", insert the word "withdrawn";

(c) after the words "for which it was granted", add the words "or which has lapsed on the death of the person to whom it was granted".

(Omitted, inserted and added by West Ben. Act XXXIV of 1965, section 24.)

1st Schedule to, the 1939).

re-enacted by the Act of 1951) and this Act.

(No. 3, dated the 1st May, 1970.)

[Ben. Act V

(Chapter VI.—Licenses, Permits and Passes.—Sections 38—42.)

- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any ¹[intoxicant] for medicinal purposes.

Fees for terms, conditions and form of, and duration of, licenses, permits and passes.

38. (1) Every **Page 254—**

In section 38,—

- (a) shall be §

- (i) on paym

- (ii) subject t

- (b) shall be in
- ²
- [Statu

- (2) Every lic granted for such made by the ³[St

(1) in clause (a) of sub-section (1),—

- (a) in sub-clause (i), after the words and brackets "(if any)", insert the words "as the State Government may fix", and

- (b) in sub-clause (ii), after the words "on such conditions", insert the words "as the State Government may impose";

- (2) in sub-section (2), after the words and figures "made by the State Government under section 85," insert the word, figure and brackets "sub-section (2),".

(Inserted by West Ben. Act XXXIV of 1965, section 25.)

39. (Continu by sec. 14 of the Act VII of 1914).

Counter-part agreement by licensee, and security or deposit.

40. Any aut require the gran formity with the for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

(No. 3, dated the 1st May, 1970.)

Technical defects, irregularities and omissions.

41. (1) No license granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

- (2) The decision of the Excise Commissioner or (where a reference is made to the ³[State Government] under section 35) the ³[State Government] as to what is a technical defect, irregularity or omission, shall be final.

Pages 254-255—

Power to cancel or suspend license, permit or pass.

42. (1) Subject ment] may prescribe mit or pass under

- (a) if it is tran the per

- (b) if any dut duly p

- (c) in the ever any of with hi terms c

In sub-section (1) of section 42,—

- (a) after the words "as the State Government may prescribe", insert the words "by rule made under section 85, sub-section (2), clause (i)";

- (b) in clause (b), after the words "if any duty", insert the word "tax";

- (c) in clause (d), for the words and figures beginning with "or under the Merchandise Marks Act" and ending with "section 3 of that Act", substitute the words and figures "or under the Trade and Merchandise Marks Act, 1958 or under any of sections 479 to 489 of the Indian Penal Code, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955".

(Inserted and substituted by West Ben. Act XXXIV of 1965, section 26.)

(No. 3, dated the 1st May, 1970.)

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Section 43.)

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930.

II of 1930.
IV of 1939.
Act XLV
of 1960.

or]
any
Per

For section 43, substitute the following section namely:—

“Power to with-
draw license,
etc.

43. (1) Whenever the authority which granted any license, permit or pass under this Act considers that the license, permit or pass should be withdrawn for any cause other than those specified in section 42, it may, subject to such restrictions (if any) as the State Government may prescribe by rule under section 85, withdraw the license, permit or pass either—

(e) if the
to
187

(f) where
app
gra
of s

(g) if the
such

(a) on the expiration of fifteen days' notice in writing of its intention to do so, or

(b) forthwith, without notice, after recording its reasons in writing for doing so.

(2) When a license, permit or pass is withdrawn under sub-section (1), there shall be paid to the holder of the license, permit or pass, as the case may be, the amount (if any) deposited as security or in advance as fees in respect of the unexpired period of the license, permit or pass together with compensation amounting to fifteen days' average fees payable in respect of the license, permit or pass calculated in the manner specified in sub-section (3).
(e) of sub-section 187
other license, p
the authority
under any other
or under the Op

I of 1878,

(3) The holder of a license, permit or pass shall be entitled to any compensation in respect thereof.

43. (1) Whenever the authority which granted any license, permit or pass under this Act considers that the license, permit or pass should be withdrawn for any cause other than those specified in section 42, it may, subject to such restrictions (if any) as the State Government may prescribe by rule under section 85, withdraw the license, permit or pass either—

(a) on the expiration of fifteen days' notice in writing of its intention to do so, or

(b) forthwith, without notice, after recording its reasons in writing for doing so.

(2) If any license, permit or pass is withdrawn under sub-section (1), the said authority shall be liable to pay to the holder thereof compensation, and

Provided that where a license, permit or pass is withdrawn without notice the amount of such compensation shall be twice the amount of such average fees.

(3) The amount of fifteen days' average fees referred to in sub-section (2) shall be calculated in the following manner, that is to say,—

(i) where the fees in respect of the license, permit or pass have been fixed by auction, the amount of fifteen days' average fees shall bear to the total amount of fees so fixed the same proportion as the period of fifteen days bears to the total period of the license, permit or pass; and

(ii) in other cases the amount of fifteen days' average fees shall be the average for fifteen days of fees actually paid in respect of the license, permit or pass during a period of three months immediately preceding the withdrawal of license, permit or pass.”

¹These words are the Dangerous Drugs Act, 1930.

²The Merchandise and Merchandise

³See foot-note

⁴These words are the Government of India Act, 1935.

⁵See foot-note

(Substituted by West Ben. Act XXXIV of 1965, section 22.)

[Ben. Act V

(Chapter VI.—Licenses, Permits and Passes.—Chapter VII.—
Departmental Management or Transfer.—Sections 44—45.)

(3) When a license is withdrawn under sub-section (1), any fee paid in advance, or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to the Government.

Surrender
of license.

44. ¹[(1) Any holder of a license granted under this Act to sell an ²intoxicant may, unless his license is liable to cancellation or suspension under section 42, surrender the same on—

(i) the expiration of one month's notice in writing given by him to the Collector of his intention to surrender it, and

(ii) payment of the fees payable for the license for the whole period for which it would have been current but for such surrender :

Provided that if the Excise Commissioner is satisfied that there is sufficient Page 256—
to the holder In section 44, for clause (i) of sub-section (1), substitute the following clause, namely:—

(2) Sub-section the sale of any of an exclusive

“(i) the expiration of a period of three months, or such shorter period as the Collector may allow, after giving to the Collector a notice in writing of his intention so to do, and”.

Explanation.
section, included
been accepted,
license.

(Substituted by West Ben. Act XXXIV of 1965, section 28.)
Page 256—

In section 44A,— dated the 1st May, 1970.)

Bar to
right of
renewal
and to
compensation.

³44A. No person shall have the right to renew or to obtain compensation in respect of this Act shall have the right to renew or to obtain compensation in respect of the determination

(1) after the words “a license”, insert the words “permit”;

(2) for the words “renewal of such license”, substitute the words “renewal thereof”.

(Inserted and substituted by West Ben. Act XXXIV of 1965, section 29.)

DEPARTMENT.

(No. 3, dated the 1st May, 1970.)

Power of
Collector
to take
grants
under
management, or to transfer them.

45. If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under

¹This sub-section (1) of sec. 44 was substituted for the original sub-section (1) by sec. 16 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). The original sub-section ran thus:—

“(1) Any holder of a license granted under this Act to sell an excisable article may surrender his license on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same, unless the license is liable to cancellation or suspension under section 42”.

²See foot-note 3 on page 285, ante.

³Section 44A was inserted by sec. 16 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter VIII.—Offences and Penalties.—Section 46.)

section 22, contravenes any provision of this Act or any rule made hereunder, or makes default in complying with any condition imposed upon him by such license or privilege, or

if any holder of a license granted under this Act surrenders the same under section 44,

the Collector may (in the case of a license, after the cancellation or surrender thereof, and, in the case of an exclusive privilege at any time)—

(a) take the grant under management, at the risk and loss of the person to whom it was made, or

(b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person :

age 258—

1*

After section 46, insert the following section, namely:—

'Offences by 46A. (1) Where any offence punishable under this Act is committed by a Company, the Company and every Director, Manager, Secretary or agent of the Company, unless such Director, Manager, Secretary or agent proves that the offence was committed without his knowledge or consent, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any other officer or person concerned in the management of the affairs of the Company, such other officer or person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

s Act, or of any given, or license,

res, possesses or

iva), or

plant (*Cannabis*)ug can be manu-

or

ay materials, still, thatsoever for the xicant] other than

Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.

Explanation.—For the purposes of this section—

(a) "Company" means a body corporate and includes a firm or other association of individuals; and

(b) "Director, in relation to a firm" means a partner of the firm'.

arehouse, or distillery, brewery, licensed, establishments Act,

of the Bengal Excise Act, thus:—

ified that there is a may remit such loss tender, or any portion

ed by West Ben. Act XXXIV of 1965, section 31.)

[Ben. Act V

(Chapter VIII.—Offences and Penalties.—Sections 47—48A.)

Page 258—

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both."

In section 46, for the words "imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both" substitute the words "imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five thousand rupees".

**

Presumption as to offence where possession is not satisfactorily accounted for.

47. In prosecution and until the offence committed an offence

(Substituted by West Ben. Act XXXIV of 1965, section 30.)

(a) any [intoxicant]

(No. 3, dated the 1st May, 1970.)

(b) any still, the material

[intoxicant] other than *tari*, or

(c) any materials which have undergone any process towards the manufacture of an [intoxicant] or from which an [intoxicant] has been manufactured,

for the possession of which he fails to account satisfactorily.

Penalty for altering or attempting to alter any denatured spirit.

48. If any person alters or attempts to alter any denatured spirit, whether manufactured in [India] or not, with the intention that such spirit may be used for any purpose other than as a beverage, he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

Page 258—

For section 48, substitute the following section, namely:

or has in his possession any spirit which he knows or has reason to believe to have been derived from denatured spirit by alteration, with the intention that such spirit may be used for human consumption internally, whether as a beverage or medicine or in any other way whatsoever, he shall be liable to imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five thousand rupees."

Penalty for altering or attempting to alter denatured spirit.

48. If any person

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

(a) alters or attempts to alter, by any means whatsoever, any denatured spirit, or

Presumption as to offence under section 48 in certain cases.

48A. In prosecution and until the offence committed an offence

(b) has in his possession any spirit which he knows or has reason to believe to have been derived from denatured spirit by alteration, with the intention that such spirit may be used for human consumption internally, whether as a beverage or medicine or in any other way whatsoever, he shall be liable to imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five thousand rupees."

¹This word in section 18 of the Bengal Excise Act, 1914.

²The proviso to section 18 of the Bengal Excise Act, 1914.

³See foot-note 2 on page 258.

⁴This word was substituted by Article 3 of the Bengal and Punjab Acts Order, 1948.

⁵Section 48A was inserted by section 21 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

(Substituted by West Ben. Act XXXIV of 1965, section 32)

(No. 3, dated the 1st May, 1970.)

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 48B—50.)

referred to in section 48 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

(i) has himself made such alteration or attempt, or

Page 259—

such alteration or

In section 48B, for the words “any quantity of any denaturant is, or has been derived from, denatured spirit.”, substitute the words “any denaturant different in kind, quality or quantity from such as may be prescribed by rule made under clause (3) of section 86 for denaturing spirit, has been derived from denatured spirit by alteration.”.

Presumption as to any spirit which contains any denaturant.

Substituted by West Ben. Act XXXIV of 1965, section 33.) vendor, or any

(No. 3, dated the 1st May, 1970.)

toxicant] manufacturer, any noxious under section 86, not amount to an Indian Penal Code,

Penalty for adulteration by licensed manufacturer or vendor or his servant.

Page 259—

In section 49,—

(1) for the words “three months”, substitute the words “eighteen months”;

(2) for the words “one thousand rupees”, substitute the words “five thousand rupees”.

act of which such term which may tend to one thou-

(Substituted by West Ben. Act XXXIV of 1965, section 34.)

(No. 3, dated the 1st May, 1970.)

and vendor, or any

(a) sells or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, or

Penalty for fraud by licensed manufacturer or vendor or his servant.

(b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or

deals with any bottle, case, package, or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor,

and such marking or dealing does not amount to an offence punishable under section 482 of the said Indian Penal Code,

¹Section 48B was inserted by section 21 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 2 on page 285, ante.

³These words enclosed within square brackets in sec. 49 was inserted by sec. 22 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

In section 50,—

(1) for the words "three months", substitute the words "one year",

(Chapter VI

(2) for the words "five hundred", substitute the word "two thousand".

he shall be extend to three hundred rupees,

(Substituted by West Ben. Act XXXIV of 1965, section 35.)

(No. 3, dated the 1st May, 1970.)

Penalty for certain unlawful acts of licensed vendors or their servants.

51. (1) If a person and acting on

Page 260—

In sub-section (1) of section 51,—

(a) in connection with employment

(1) for clause (a), substitute the following clause, namely:—

(b) sells articles

"(a) employs, or permits to be employed, in any part his licensed premises referred to in section any woman or other person in contravention that section; or";

(c) sells children who are otherwise the property of

(2) in clause (c),—

(a) for the word "child", in the two places where it occurs, substitute the word "person";

(d) permits gambling

(b) for the words "sixteen years", substitute the words "twenty-one years"; and

(e) permits to be offered any vendition

(3) for the words "fine which may extend to five hundred rupees.", substitute the words "imprisonment for a term which may extend to six months or to fine which may extend to two thousand rupees or to both.".

(Substituted by West Ben. Act XXXIV of 1965, section 36.)

he shall be rupees.

(No. 3, dated the 1st May, 1970.)

Page 260—

(2) When a person and acting on his own or intoxication or that any person shall lie on the persons employ ting drunkenness

In section 52, for the words "six months, or to fine which may extend to one thousand rupees, or to both", substitute the words "one year and shall also be liable to fine which may extend to two thousand rupees".

(Substituted by West Ben. Act XXXIV of 1965, section 37.)

(No. 3, dated the 1st May, 1970.)

Penalty for possession of intoxicant in respect of which an offence has been committed.

52. If any person, who has in his possession any quantity of any ¹[intoxicant], knowing the same to have been unlawfully imported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to ²[six] months, or to fine which may extend to one thousand rupees, or to both.

¹ See foot-note 2 on page 285, ante.

² These words were substituted for the words "fourteen years" by sec. 2 of the Bengal Excise (Amendment) Act, 1922 (Ben. Act VII of 1922).

³ See foot-note 1 on page 285, ante.

In section 53,—

(1) in sub-section (1),—

(a) for the words "three months", substitute the words "three months" and "one year", and

(b) for the words "one thousand", substitute the words "one thousand" or keeper of a shop, etc.

(2) in sub-section (2), for the words "fine which may extend to two hundred rupees", substitute the words "imprisonment for a term which may extend to three months or to fine which may extend to one thousand rupees or to both".

(Substituted by West Ben. Act XXXIV of 1965, section 38.)

Page 261— (No. 3, dated the 1st May, 1970.)

In section 54,—

(1) for the words "two hundred", substitute the words "one thousand".

(2) for the words "five hundred", substitute the words "two thousand".

(Substituted by West Ben. Act XXXIV of 1965, section 39.)

(No. 3, dated the 1st May, 1970.)

55. (1) When any ¹[intoxicant] has been ²[imported, exported, transported,] manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such ³[import, export, transport,] manufacture or sale was, or that such possession is, on his account, the article shall, for the purposes of this Act, be deemed to have been ³[imported, exported, transported,] manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who ³[imports, exports, transports,] manufactures, sells or has possession of an ¹[intoxicant] on account of another person from liability to any punishment under this Act for the unlawful ³[import, export, transport,] manufacture, sale or possession of such article.

56. When any offence punishable under section 46, section 49, section 50, section 51, section 52 or section 54 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder

¹ See foot-note 2 on page 235, ante.

² See foot-note 2 on page 232, ante.

³ These words were inserted by sec. 22 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Penalty for consumption in chemist's shop, etc.

Penalty for certain acts by licensee or his servants.

Import, export, transport, manufacture, sale or possession by one person on account of another.

Criminal liability of licensee for acts of servant.

In section 56,—

(Chapter I

shall also be
offence, unless
tions were ext
offence.(1) for the words "punishable as if he had", substitute
the words "deemed to have";(2) after the words "commission of such offence",
the following words and figures, namely:—", and shall, subject to the provisions of section
punishable accordingly".Imprison-
ment under
section 55
or section
56.57. No pe
shed under sec
in default of p(Substituted and added by West Ben. Act XXXIV of 1965,
section 40.)

(No. 3, dated the 1st May, 1970.)

Page 262—

58. If an

In section 58,—

Penalty on
Excise
Officer
making
vexatious
search,
seizure,
detention
or arrest,
or refusing
duty, or
being
guilty of
cowardice.

(a) witho

(1) for the words "three months", substitute the words
"one year";

ca

(2) for the words "five hundred", substitute the words
"two thousand".

(b) vexati

(Substituted by West Ben. Act XXXIV of 1965, section 41.)

pe

art

(No. 3, dated the 1st May, 1970.)

(c) vexatic

any

(d) without

Page 262—

with

In section 59, for the words "two hundred", substitute the
words "one thousand".

exp

or 1

moi

(Substituted by West Ben. Act XXXIV of 1965, section 42.)

(No. 3, dated the 1st May, 1970.)

(e) is guilty

he shall be
extend to th
hundred rupee

Page 262—

In section 60, after the words "Indian Penal Code", add
the following words, namely:—Penalty for
offences
not other-
wise
punishable.59. If any
any of the pro
order made, is
is not prescrib
which may ext"and every Collector or Officer holding such proceeding
shall, for the purposes of sections 480, 481, 482
and 484 of the Code of Criminal Procedure, 1898,
be deemed to be a revenue court".

(Added by West Ben. Act XXXIV of 1965, section 43.)

(No. 3, dated the 1st May, 1970.)

Penalty for
contempt
of Court.60. Every proceeding before any officer, of such rank as the [State Government]
may by notification, prescribe; who is exercising powers of a
Collector, shall be deemed to be a "judicial proceeding" within
the meaning of section 228 of the Indian Penal Code.Act XLV
of 1860.Penalty for
attempt to
commit61. Whoever attempts to commit any offence punishable
under this Act shall be liable to the punishment provided for such
offence.

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 62—64.)

62. If any person, after having previously been convicted of an offence punishable under section 46, ¹[section 48,] section 52 or section 53, or under similar provisions in any enactment repealed by this Act ²[or in the Eastern Bengal and Assam Excise Act, 1910,]

Enhanced punishment after previous conviction.

E. B. and A. Act I of 1910.

Page 263—

subsequently commits and is convicted of an offence punish-

Omit the proviso to section 62.

(Omitted by West Ben. Act XXXIV of 1965, section 44.)

(No. 3, dated the 1st May, 1970.)

prevent any

Act V of 1898.

Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

63. (1) Whenever an offence has been committed which is punishable under this Act, the "[intoxicant], materials, still,

What things are liable to confiscation.

Page 263—

To the proviso to sub-section (2) of section 63, add the following Explanation, namely:—

'Explanation.—For the purposes of this section, "owner" includes, in relation to any animal, cart, vessel, with, or in raft or other conveyance,—

- (a) which is in the possession of a minor, the guardian of such minor, or
- (b) which is the subject of a hire purchase agreement, the person in possession thereof under that agreement."

(Added by West Ben. Act XXXIV of 1965, section 45.)

(No. 3, dated the 1st May, 1970.)

Pages 263-264—

In section 64,—

- (1) to sub-section (1), add the following proviso, namely:—

"Provided that the Magistrate shall in all cases order confiscation of the intoxicants decided by him to be liable to confiscation under section 63."

- (2) in the first proviso to sub-section (2), for the words and brackets "hearing any person who may claim any right thereto and the evidence (if any) which he produces", substitute the words "giving such person as may, before such expiration, claim any right thereto, an opportunity of being heard and of producing such evidence as he may like to produce".

conveyance; the owner; mission of

Magistrate; section 63, such thing fine as the

Confiscation by Magistrate or Collector.

so. 24(a) of the

Added and substituted by West Ben. Act XXXIV of 1965, section 46.)

[Ben. Act V

(Chapter VIII.—Offences and Penalties.—Section 65.)

(2) Whenever anything is liable to confiscation under section 63, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of ¹[two months] from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto and the evidence (if any) which he produces in support of his claim :

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

Power to compound offences and to release property liable to confiscation.

65. (1) The Collector, or any Excise Officer specially empowered by the ²[State Government] in this behalf, not below the rank of Deputy Collector, ³[or Inspector⁴ of Excise],—

- (a) may accept from any person whose license, permit or pass is liable to be cancelled or suspended under clause (a), clause (b) or clause (c) of section 42, or who is reasonably suspected of having committed an offence punishable under ⁵[any section of this Act other than section 60], payment of a sum of money, not exceeding two Page 264—

sus In sub-section (1) of section 65,—
as

- (b) in any
bei
an
un
on
as
- (1) for the words beginning with "specially empowered" and ending with "Inspector of Excise", substitute the following words, namely:—
"not below the rank of Inspector of Excise, authorised by the Collector by general or special order in this behalf";
- (2) in clause (a),—

- (a) for the word and figures "section 42", substitute the words, figures and brackets "sub-section (1) of section 42", and

- (b) for the words "two hundred", substitute the words "one thousand";

- (3) in clause (b), for the words, figures and brackets "before the Magistrate has passed an order under section 64, sub-section (1)", substitute the words "before the case is lodged before the Magistrate".

(Substituted by West Ben. Act XXXIV of 1965, section 47.)

¹These words the Bengal Excise

²See foot-note

³The words v Excise (Amendment) Act of Excise" substituted by the w 1989 (vide foot-note)

⁴The words 'tendent of Excise' (Ben. Act VI of 1

⁵The words in clause (a) of s figures "section Bengal Excise (A

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 66.)

(2) When the payments referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released; and no further proceeding shall be taken against such person or property.

CHAPTER IX.

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES AND PROCEDURE.

66. Any of the following officers, namely,—

- (a) the Excise Commissioner, or
- (b) a Collector,
- (c) any Excise Officer not below such rank as the ¹[State Government] may, by notification, prescribe,

Power to enter and inspect, and power to test and seize measures, etc.

may, subject to any restrictions prescribed by the ¹[State Government]

Page 265—

(i) ent In section 66,—

(1) in clause (ii), for the words "is kept", substitute words "is sold or kept";

(ii) ent (2) in clause (iia), for the words "accounts and registers", substitute the words "accounts, registers, passes and such other documents as may be prescribed by the State Government by rule made under section 85 in this behalf";

⁴(iia) e (3) after clause (iii), insert the following clause, namely:—

(iii) exi "(iia) seize any intoxicant (including any sample of any intoxicant), materials, stills, utensils, implements or apparatus referred to in clause (i), clause (ii) or clause (iii) together with any accounts, registers, passes and other documents referred to, or connected with those referred to, in clause (iia) found in any such place as aforesaid;".

(iv) exa

¹See foot-note

²See foot-note

³See foot-note

⁴Clause (iia) (Amendment) Act

(Substituted and inserted by West Ben. Act XXXIV of 1965, section 48.)

(No. 3, dated the 1st May, 1970.)

[Ben. Act V

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 67—69).

Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.

67. Any of the following persons, namely,—

(a) any officer of the ¹[Excise and Salt, Police, Customs] or Land-revenue Department, or

(b) any person empowered by the ²[State Government] in this behalf, by notification,

may, subject to any restrictions prescribed by the ³[State Government] by rule made under section 85,—

(i) arrest without warrant any person found committing an offence punishable under section 46, section 48, section 52 or section 53 ; and

(ii) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise-revenue ; and

(iii) detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be.

Power to issue warrant of arrest.

68. The Collector, ⁴[or any Magistrate empowered to try offences punishable under this Act,] may issue a warrant for the arrest of any person whom he has reason to believe to have committed ⁵[or abetted the commission of] any offence punishable under section 46, section 48, section 52 or section 53.

Power to issue search warrant.

69. If any Collector, or ⁶[any Magistrate empowered to try offences punishable under this Act,] upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 46, section 48, section 52 or section 53 has been, or is likely to be committed ⁷[or abetted,]

he may issue a warrant to search for—

Page 266—

any ⁸[intoxicant], material, still, utensil, implement or apparatus, or is likely to

In section 69,—

(1) after the words “warrant to search for”, insert the words “and to seize”, and

(2) for the words beginning with “any document” and ending with “alleged offence.”, substitute the following words, namely:—

“any document or other article which may furnish evidence of the commission of the alleged offence.”.

(Inserted and substituted by West Ben. Act XXXIV of 1965, section 49.)

see (Amendment)

by sec. 29(a),

29 (b), *ibid.*

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 69A—71.)

¹69A. The Collector, or any Magistrate empowered to try offences punishable under this Act, may at any time—

Power of Collector or Magistrate to arrest or search without issuing a warrant.

(a) arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under section 68, or

(b) search, or direct a search to be made in his presence of, any place for the search of which he is competent to issue a search-warrant under section 69.

70. Whenever ** * * any Excise Officer not below such rank as the ³[State Government] may, by notification, prescribe, has reason to believe that an offence punishable under section 46, section 48, section 52 or section 53 has been, ⁴being or is likely to be, committed ⁴[or abetted,] and that a

Power of Excise Officer to search without a warrant.

Page 267—

In section 70, after the words “liable to confiscation under this Act”, insert the words “together with any document which may furnish evidence of the commission of the alleged offence”.
(Inserted by West Ben. Act XXXIV of 1965, section 50.)

(No. 3, dated the 1st May, 1970.)

per, arrest, any n to believe to iforesaid.

71. (1) Every Officer of the Police, ⁵[Excise and Salt, Customs] and Land-revenue Departments, and every officer employed by ⁶[a body of Port Commissioners,] shall be bound, subject to any rules made under section 85, clause (1), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge,

Information and aid to Excise Officers.

(2) Every Officer referred to in sub-section (1), and every village *chaukidar* and *dafadar*, shall be bound, subject to any rules made under section 85, clause (1), to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or d or given under

ge 267—

In section 71,—

(1) after the word and figures “section 85,” in the two places where they occur, insert the word, figure and brackets “sub-section (2),”; (Amendment) Act *ibid.*

(2) in sub-section (1), for the words beginning with “Police, Excise and Salt,” and ending with “body of Port Commissioners,” substitute the words “State Government”. Excise (Amendment) Customs, Opium” by ling and Amending

inserted and substituted by West Ben. Act XXXIV of 1965, section 51.) commissioners for the (Amendment) Act, 1914 (Ben.

(No. 3, dated the 1st May, 1970.)

(Chapter IX.— In section 72,—

- (1) after the words "on any land", insert the words "or in any hut or building";
- (2) after the words "occupiers of such land", insert the words "or of such hut or building, as the case may be";
- (3) after the words "of the village", insert the words "in which such land, hut or building may be situated".

Duty of owners and occupiers of land and other persons to give notice of unlicensed manufacture.

72. Whenever hemp plant (C) hemp plant (C) can be manufa contravention of

all owners at all panchayets, v. and dafadars of

(Inserted by West Ben. Act XXXIV of 1965, section 52.)

shall, in the (No. 3, dated the 1st May, 1970.) notice of the fact to a Magistrate or an officer of the Excise, Police or Land-revenue Department, as soon as the fact comes to their knowledge.

Power to Collector and certain Excise Officers to investigate offences.

73. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

Act V of 1898.

(2) Any other Excise Officer specially empowered in this behalf by the ²[State Government] in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such Officer is appointed would have power to inquire into or try under the aforesaid provisions.

Powers and duties of Collector and certain Excise Officers investigating offences.

74. (1) Any Collector, or any Excise Officer empowered under section 73, sub-section (2), may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise—

- (a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station, by sections 166 to 171 of the Code of Criminal Procedure, 1898, and,
- (b) as regards offences punishable under section 46, section 48, section 52 or section 53 of this Act—any of the powers conferred upon Police Officers in respect of cognizable offences by clause first of sub-section (1) of section 54 and by section 56 of the said Code ;

and the said portion of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the ²[State Government] by rule made under section 85, clause (o).

¹ See foot-note 2 on page 235, ante.

² See foot-note 2 on page 232, ante.

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 75.)

(2) Subject to any restrictions prescribed by the ¹[State Government], a Collector, or an Excise Officer empowered under section 73, sub-section (2), may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

Act V of 1898.

(3) For the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under section 73, sub-section (2), is appointed shall be deemed to be a police-station, and, such Officer shall be deemed to be the officer in charge of such station.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 73, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 65 of this Act, shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police-report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take

Page 269—

In section 75,—

(1) in sub-section (1),—

(a) for the words beginning with "Whenever a Collector" and ending with "he shall direct," substitute the words "A Collector or a Magistrate having jurisdiction under section 82 to try the case may issue a warrant under this Act for the arrest of any person, and may, at his discretion direct," ;

(b) for the words "take such security, and shall release such person from custody," substitute the words "release such person from custody if such bond is executed by him." ;

(2) omit sub-section (4) ;

(3) after sub-section (6), insert the following sub-section, namely:—

"(6a) A bond taken under this section shall, for the purposes of sub-section (7), be deemed to be a bond under the Code of Criminal Procedure, 1898." ;

(4) in sub-section (7), after the figures "514", insert the figures and letter " , 514A, 514B".

Substituted, inserted and omitted by West Ben. Act XXXIV of 1965 section 53.)

t under this Act

Security and Bail.

, that, if such his attendance, empowered under at a specified ie Collector or cer to whom d shall release

for whose ely to be

Act V of 1898.

resaid.

s officer to the

(No. 3, dated the 1st May, 1970.)

[Ben. Act V

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 76, 77.)

add

(4) Whenever any person is arrested under this Act, otherwise than under a warrant, and is prepared to give bail, he shall be released on bail, or, at the discretion of the Officer releasing him, on his own bond.

(5) Any Excise Officer not below such rank as the ¹[State Government] may, by notification, prescribe, may release persons on bail or on their own bond.

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise Officer empowered under section 73, sub-section (2) to investigate the case.

(7) The provisions of sections 498 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

Act V of 1898.

Page 270—

Production of articles seized and persons arrested,

76. (1) Articles, and, unless seized, persons taken before the Collector

(2) Articles and persons having authority own bond, shall

(a) the Collector

(b) the nearest

(c) the office nearest

(3) When a person who has taken their own bond, such officer shall appear before under section 73

(4) When an officer before an officer as the case may be, of them in some to such an office

In section 76,—

(1) in sub-section (1),—

(a) for the words “the warrant of the Collector,” substitute the words “a warrant issued under this Act”;

(b) after the words “for their appearance before the Collector”, insert the words “or an Excise Officer empowered under section 73, sub-section (2), to investigate the case”;

(c) after the words “shall be produced before the Collector”, add the words “or such Excise Officer”;

(2) in sub-section (4), for the words “dispose of them” substitute the words “dispose of such article”.

(3) after sub-section (4), insert the following sub-section, namely:—

“(5) Notwithstanding anything elsewhere contained in this Act, when an article seized under section 66, section 67, section 69 or section 70 is subject to speedy decay, such article may be destroyed in accordance with rules made under section 86, clause (14).”

(Substituted, inserted and added by West Ben. Act XXXI of 1965, section 54.)

Custody by Police of articles seized.

77. (1) All charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under section 73, sub-section (2), to investigate the case, all

(No. 3, dated the 1st May, 1970.)

¹See foot-note 2 on page 282, ante.

In sub-section (1) of section 77,—

- (1) for the words "all articles seized", substitute the words "all persons arrested and all articles seized"; of Offences and
- (2) for the words "which may be delivered", substitute the words "and brought or delivered"; delivered to them;
- (3) for the words "accompany such articles", substitute the words "accompany any such articles". accompany such
- deputed for the
- al to such articles
- substituted by West Ben. Act XXXIV of 1965, section 55.)

(No. 3, dated the 1st May, 1970.)

the seal of the

officer in charge of the police-station.

78. When any Excise Officer below the rank of Collector, or any officer in charge of a police-station, makes, or receives information of, any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 73, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made.

Reports of arrests, seizures, and searches.

79. Any warrant issued by a Collector may be executed by any officer selected by the Collector for the purpose :

Execution of Collector's warrant.

Page 271—

For section 79, substitute the following section, namely:—

"Execution of warrant.

79. Any warrant issued by a Collector or a Magistrate under this Act may be executed by the Officer to whom the warrant is directed or by any other Officer selected by the Collector or the Magistrate for the purpose."

he said Commissioner duly employed shall be detained in any circumstances of the said Act, shall not exceed twenty-four hours from the time of his arrest or of his seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 73, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made.

Maximum period of detention.

(Substituted by West Ben. Act XXXIV of 1965, section 56.)

(No. 3, dated the 1st May, 1970.)

Page 271—

In sub-section (1) of section 80,—

- (1) for the words "shall not exceed twenty-four hours," substitute the words "shall not, without the authority of the Magistrate, exceed twenty-four hours," on is forwarded to the Collector, 1898, by a section 73, sub-section (2), to investigate the case of a Magistrate

- (2) for the words, figures and brackets "to the place where a Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case may be, and thence to the Court of a Magistrate having jurisdiction to inquire into or try the case," substitute the words "to the Court of the nearest Magistrate."

ressly provided, 1898, relating to the Code of Criminal Procedure, 1898.

Application of certain provisions of the Code of Criminal Procedure, 1898.

(Substituted by West Ben. Act XXXIV of 1965, section 57.)

(No. 3, dated the 1st May, 1970.)

the said Code,

shall be deemed to be a Court.

Page 272—

In sub-section (3) of section 81, for the words "to whom a Collector's warrant is directed or endorsed," substitute the words "executing any warrant issued under this Act,".

(Substituted by West Ben. Act XXXIV of 1965, section 58.)

(No. 3, dated the 1st May, 1970.)

said provisions of the said Code, be deemed to be Police Officers.

Magistrates
having
jurisdiction
to try
offences.

82. No Magistrate other than—

- (a) a Presidency Magistrate, or
- (b) a Magistrate whose powers are not less than those of a Magistrate of the second class, or
- (c) a Magistrate of the third class, specially empowered by the District Magistrate in this behalf,

shall try any offence punishable under this Act.

Initiation
of certain
prosecu-
tions.

83. No Magistrate shall take cognizance of an offence referred to—

- (a) in section 46, section 48, section 52 or section 53, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the ¹[State Government] ; or
- (b) in section 54, section 58, clause (d) or clause (e), or section 59, except on the complaint or report of the Collector or an Excise Officer authorised by the Collector in this behalf.

Bar to
transfer
of trial on
applica-
tion of
accused.

84. The provisions of section 191 of the Code of Criminal Procedure, 1898, shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 83.

Act V of
1898.

CHAPTER X.

MISCELLANEOUS.

Power of
State
Govern-
ment to
make
rules.

85. (1) The ¹[State Government] may make rules to carry out the objects of this Act or any other law for the time being in force relating to the excise-revenue.

(2) In particular, and, without prejudice to the generality of the foregoing provision, the ¹[State Government] may make rules—

- (a) for prescribing the powers and duties of officers of the Excise Department ;
- (b) for regulating the delegation of any powers by ²* the Commissioner of a Division, the Excise Commissioner or Collectors under section 7, clause (g) ;

¹ See foot-note 2 on page 282, *ante*.

² The words "the Board" were repealed by sec. 5(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter X.—Miscellaneous.—Section 85.)

- (c) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting, and the procedure for dealing with, such appeals ;
- (d) for regulating the import, export or transport of any ¹[intoxicant] ;
- (e) for regulating the periods for which licenses for the wholesale or retail vend of any ¹[intoxicant] may be granted, and the number of such licenses which may be granted for any local area ;
- (f) for prohibiting the grant of licenses for the retail sale of any ¹[intoxicant] at any place or within any local area

Pages 272, 273—

In sub-section (2) of section 85,—

- (1) in clause (b), after the word and figure "section 7," insert the word, figure and brackets "sub-section (2)," ;
- (2) in clause (d), for the words "or transport", substitute the words "transport, sale, purchase, possession or consumption" ;
- (3) in clause (g), for the words "for the retail sale of any intoxicant ;", substitute the words "of any particular kind or class ;" ;
- (4) after clause (h), insert the following clause, namely:—
 "(i) for prescribing restrictions subject to which a license, permit or pass granted under this Act may be cancelled or suspended ;" ;
- (5) in clause (k), for the word, letter and brackets "clause (a)", substitute the word, figure and brackets "sub-section (1)".

(Inserted and substituted by West Ben. Act XXXIV of 1965, section 59.)

(No. 3, dated the 1st May, 1970.)

- (o) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1898, relating to powers of Police Officers which are referred to in section 74, sub-section (1), of this Act.

Act V of 1898.

¹ See foot-note 2 on page 235, ante.

² These words, figures, letter and brackets were inserted by sec. 88 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

(Chapter X.—Miscellaneous.—Section 86.)

(3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication :

Provided that any such rules may be made without previous publication if the ¹[State Government] considers that they should be brought into force at once.

Further
power of
State
Govern-
ment to
make
rules.

86. The ²[State Government] may make rules—

(1) for regulating the manufacture, supply or storage of any ³[intoxicant], and in particular, and without prejudice to the generality of this provision, may make rules for regulating—

(a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any ³[intoxicant], and the provision and maintenance of fittings, implements and apparatus

Pages 274-276—

In section 86,—

(1) in sub-clause (f) of clause (1), for the words, figures *ativa* ;
and brackets “under section 14, sub-section (1),” it (*Cannabis*
substitute the words “in this behalf by the State be manu-
Government,” ; ture or pro-

(2) in clause (9), for sub-clause (vii), substitute the fol- drawing of
lowing sub-clause, namely:—

“(vii) prescribing the accounts and registers (if any) to eas notified
be maintained and the returns to be submitted maintenance
by the licensees relating to their business, and” ;

(3) in clause (13), for the words “other disposal”, sub-ccess of or
stitute the words “for the disposal in any other supplied or
manner,” ; denatured

(4) for clause (14), substitute the following clause, rescribing a
namely:—

“(14) for regulating the disposal or destruction of ** India
articles or things confiscated or seized under the
provisions of this Act,”.

(Substituted by West Ben. Act XXXIV of 1965, section 60.) e denatured
provision of

(No. 3, dated the 1st May, 1970.)

¹ See foot-note 4 on page 286, ante.

² See foot-note 2 on page 285, ante.

³ The word “British” was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴ The words “Servants of the Crown” were originally substituted for the words “Government Officers” by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “Government” was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1909.]

(Chapter X.—Miscellaneous.—Section 86.)

- (5) for ascertaining whether any spirit so manufactured has been denatured ;
- (6) for regulating the deposit of any ¹[intoxicant] in a warehouse established, authorised or continued under this Act, and the removal of any ¹[intoxicant] from any such warehouse or from any distillery or brewery ;
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any ¹[intoxicant] ;
- (8) for regulating the time, place and manner of payment of such fees ;
- (9) for prescribing the restrictions under which or the conditions on which any license, permit or pass, may be granted, and in particular, and without prejudice to the generality of this provision, may make rule for—
 - (i) prohibiting the admixture with any ¹[intoxicant] of any article deemed to be noxious or objectionable,
 - (ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength,
 - (iii) prescribing the nature and regulating the arrangement of the premises in which any ¹[intoxicant] may be sold, and prescribing the notices to be exposed at such premises,
 - (iv) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business,
 - (v) prohibiting the sale of any ¹[intoxicant] except for cash,
 - (vi) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions,
 - (vii) prescribing the accounts to be maintained and the returns to be submitted by licensees, and
 - (viii) regulating the transfer of licenses ;
- (10) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act ;
- (11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section ;

¹ See foot-note 2 on page 235, *ante*.

(Chapter X.—Miscellaneous.—Sections 87—89.)

- (12) for prescribing the time, place and manner of levying duty on ¹[intoxicants] ;
- (13) for providing for the destruction or other disposal of any ²[intoxicant] deemed to be unfit for use ; and
- (14) for regulating the disposal of things confiscated under this Act,

Explanation.—Fees may be prescribed under clause (7) of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage, and for different areas.

87. (*Powers of Board exercisable from time to time.*)—Rep. by sec. 5 (d) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Publica-
tion and
effect of
rules and
notifica-
tions.

88. All rules made, and notifications issued, under this Act shall be published in the ³[Official Gazette], and on such publication shall have effect as if enacted in this Act.

Recovery
of dues.

89. The following moneys, namely,—

- (a) all excise-revenue,
- (b) any loss that may accrue when a grant has been taken under management by the Collector and transferred by

Page 276—

In sub-section (1) of section 89, for the words "or by the process prescribed", substitute the words "and shall also be recoverable by the process authorised".

Substituted by West Ben. Act XXXIV of 1965, section 61.) by any person to pay the of his mov- recovery of

(No. 3, dated the 1st May, 1970.)

Collector, or has been transferred by him, under section 45, the Collector may recover, in any manner authorized by sub-section, (1), any money due to the grantee by any lessee or assignee.

(3) When any money is due, in respect of an exclusive privilege to a grantee referred to in section 23, from any person holding under him,

such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1) :

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

¹See foot-note 3 on page 240, ante.

²See foot-note 2 on page 235, ante.

³These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "Provincial Government" were originally substituted for the word "Government" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1909.]

(Chapter X.—Miscellaneous.—Sections 90—93 and the Schedule.)

90. The ¹[State Government] may, by notification, either wholly or partially, and subject to such condition (if any) as it may think fit to prescribe, exempt any ²[intoxicant] from all or any of the provisions of this Act, either throughout ³[West Bengal] or in any specified local area, or for any specified period or occasion or as regards any specified class of persons.

Power of State Government to exempt intoxicants from provisions of Act.

91. No suit shall lie in any Civil Court against the ⁴[Government] or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise-revenue.

Bar to certain suits.

92. No Civil Court shall try any suit against the ⁴[Government] in respect of anything done, or alleged to have been done, in pursuance of this Act,

Limitation of suits and prosecutions.

and, except with the previous sanction of the ¹[State Government], no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of.

Ben. Act III of 1884.

⁵92A. Section 261 of the Bengal Municipal Act, 1884^a, shall not apply to—

Bar to application of section 261 of the Bengal Municipal Act, 1884.

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In section 92A, for the words and figures "Section 261 of the Bengal Municipal Act, 1884", substitute the words "Section 370 of the Bengal Municipal Act, 1932".

other place of or continued

r sale of any granted under

(Substituted by West Ben. Act XXXIV of 1965, section 62.)

1 Schedule to, Ben. Act I of

(No. 3, dated the 1st May, 1970.)

THE SCHEDULE.

Rep. by section 3 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

¹ See foot-note 2 on page 232, ante.

² See foot-note 2 on page 235, ante.

³ See foot-note 3 on page 231, ante.

⁴ The word "Crown" was originally substituted for the words "Secretary of State for India in Council" by para. 3 and schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵ Section 92A was inserted by sec. 34 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

^a Ben. Act III of 1884 was repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932). This reference should now be construed as a reference to sec. 870 of the latter Act.

Bengal Act V of 1911
THE CALCUTTA IMPROVEMENT ACT, 1911.

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Bengal Act V of 1911

(THE CALCUTTA IMPROVEMENT ACT, 1911.)¹

SUPPLEMENTED	Act XVIII of 1911.
EXTENDED TO EASTERN BENGAL	...	...	Ben. Act I of 1914.
REPEALED IN PART	...	...	Ben. Act I of 1922.
REPEALED IN PART AND AMENDED	...	...	Ben. Act III of 1915. Act XXXVIII of 1920. Ben. Act I of 1939.
AMENDED	...	...	Ben. Act IX of 1928. Ben. Act II of 1926. Ben. Act VIII of 1931. Ben. Act II of 1935. Ben. Act XVI of 1946. West Ben. Act XXII of 1948. West Ben. Act XVII of 1949. West Ben. Act L of 1950. West Ben. Act XXXII of 1955. West Ben. Act XX of 1961.
ADAPTED			(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(20th September, 1911.)

An Act to provide for the improvement and expansion of Calcutta.

WHEREAS it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* the *Calcutta Gazette* of 1910, Part IV, pages 102 to 111; for Reports of Select Committee, *see ibid*, 1911, Part IV, pages 12 to 40 and pages 123 and 124; for Proceedings in Council, *see ibid*, 1910, Part IVA, pages 470 to 476, 519 to 526; and *see ibid*, 1911, Part IVA, pages 49, 56, 247 to 250, 348 to 398, 401 to 467, 469 to 535, 538 to 602, 604 to 674 and 676 to 742.

LOCAL EXTENT.—This Act (except sections 82 to 86) extends only to the Calcutta Municipality—*See* sec. 1(3).

Section 82 originally extended throughout Bengal as constituted in the year 1911, i. e., to—

- (1) the former Province of Bengal except Eastern Bengal, and
- (2) the Province of Bihar and Orissa.

This section has since been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), sec. 3, Sch. I.

Section 83 extends to—

- (1) railway stations in the Calcutta and Howrah Municipalities, and
- (2) certain landing-places in the Port of Calcutta;

Section 84 extends to the Port of Calcutta;

Section 85 extends to Calcutta;

Section 86 has the same local extent as sections 82, 83 and 84. So far as it affects sec. 82, it has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), sec. 3, Sch. I.

Several sections of the Act (*e.g.*, sections 40 to 52, 54 to 56, 63, 66, 149, 163, 167, 168) contemplate that operations of the Board of Trustees constituted under it may be carried on in areas beyond the Calcutta Municipality, and section 1(3) gives power to extend provisions of the Act to such areas.

[Ben. Act V

(Chapter I.—Preliminary.—Sections 1, 2.)

buildings, ¹[clearing bustees, executing housing schemes and schemes for the rehousing of persons displaced by the execution of improvement schemes, acquiring land for the said purposes and all works relating thereto], and otherwise as hereinafter appearing ;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act ;

AND WHEREAS the sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions of this Act, which affect Acts passed by the Governor-General of India in Council ;

55 and 56
Vict., c.
14.

AND WHEREAS the sanction of the Governor-General has also been obtained, under section 43 of the Indian Councils Act, 1861, to the enactment of the provisions of Chapter V of this Act, relating to taxation ;

24 and 25
Vict., c.
67.

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title,
commence-
ment and
extent.

1. (1) This Act may be called the Calcutta Improvement Act, 1911.

(2) It shall come into force on such day^a as the ^a[State Government] may, by notification, direct.

(3) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality ; but any provision which extends only to the Calcutta Municipality may be extended by the ^a[State Government], entirely or in part, by notification, under the procedure prescribed by section 148, to any specified area in the neighbourhood of that Municipality.

Defini-
tions.

2. In this Act, unless there is anything repugnant in the subject or context,—

^a(1a) “betterment fee” means the fee prescribed by section 78A in respect of an increase in value of land resulting from the execution of an improvement scheme ;

¹Substituted for the words “acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes” by sec. 2 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

^ai.e., the 2nd January, 1912, see notification No. 1148, dated the 30th October, 1911.

^aThe words “Provincial Government” were originally substituted for the words “Local Government”, by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1960.

^aClause (1a) was inserted by sec. 2 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

of 1911.]

(Chapter 1.—Preliminary.—Section 2.)

- (a) “the Board” means the Board of Trustees for the improvement of Calcutta, constituted under this Act ;
- ¹(aa) “building line” means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend ;
- ²(b) “the Calcutta Municipality” means “Calcutta” as defined in clause (II) of section 5 of the Calcutta Municipal Act, 1951 ;
- (c) “Chairman” means the Chairman of the Board ;
- (d) “the Corporation” means the Corporation of Calcutta constituted under the said ³[Calcutta Municipal Act, 1951],
- * * * * *
- ⁴(f) “improvement scheme” means an improvement scheme as described in section 35D, but does not include a projected public street or a projected public park referred to in section 63 ;
- (g) “land” has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894 ;
- (h) “municipal assessment-book” means the assessment-book kept ⁵[under section 185 of the Calcutta Municipal Act, 1951] or the valuation and rating list prepared under ⁷[section 136 of the Bengal Municipal Act, 1932] ;
- (j) “notification” means a notification published in the ⁸[Official Gazette] ;
- (k) “Secretary to the Board” means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board ;
- (l) the “Tribunal” means the Tribunal constituted under section 72 ;
- (m) “Trustee” means a member of the Board ; and

West Ben.
Act XXXIII
of 1951.

I of 1894.

Ben. Act
XV of 1932.

¹Clause (aa) was inserted by sec. 2(a) of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²Clause (b) was substituted for the previous clause by sec. 8(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³Substituted for the words “Calcutta Municipal Act, 1928” by sec. 8(2), *ibid.*

⁴Clause (e) was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵Substituted for the former clause by sec. 8(3) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁶Substituted for the words “under section 148 of the Calcutta Municipal Act, 1928” by sec. 8(4), *ibid.*

⁷These words and figures were substituted for the words and figures “section 108 of the Bengal Municipal Act, 1884” by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁸These words were substituted for the words “Calcutta Gazette” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1987.

[Ben. Act V

(Chapter II.—The Board of Trustees.—Sections 3—7.)

¹(n) the expressions “bustee”, “drain”, “public street” and “street alignment” have the same meaning as in clauses (10), (26), (60) and (72), respectively, of section 5 of the Calcutta Municipal Act, 1951.

West Ben.
Act XXXIII
of 1951.

CHAPTER II.

THE BOARD OF TRUSTEES.

Constitution of the Board.

Creation
and incor-
poration
of Board.

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a Board, to be called, “The Trustees for the Improvement of Calcutta”; and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitu-
tion of the
Board.

4. The Board shall consist of eleven Trustees, namely :—

- (a) a Chairman, appointed by the State Government by notification,
- (b) the Commissioner of the Corporation, *ex-officio*,
- (c) three members of the Corporation elected by the Corporation,
- (d) two members representing the four Chambers of Commerce, that is to say, the Bengal Chamber of Commerce, the Bengal National Chamber of Commerce, the Indian Chamber of Commerce and the Bharat Chamber of Commerce, elected in the manner prescribed by rules by the State Government, and
- (e) four other persons appointed by the State Government by notification.

(2) The names of the persons elected under clauses (c) and (d) of sub-section (1) shall be published by notification by the Chairman.

* * * * *

5. [Appointment of Trustees.—Omitted by sec. 5 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

6. [Ex-officio Trustee.—Omitted by sec. 5 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

7. [Election of other Trustees.—Omitted by sec. 5 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

¹Substituted for the former clause by sec. 8(5) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the former section by sec. 4, *ibid*.

³New section 4A was inserted by sec. 2 of West Ben. Act XXII of 1948; it remained in force up to the 31st March, 1950. *Vide* sec. 1(3) of West Ben. Act XXII of 1948, as amended by sec. 2 of West Ben. Act XVII of 1949.

of 1911.]

(Chapter II.—The Board of Trustees.—Sections 8, 9.)

8. If any of the bodies of electors referred to in ¹[clause (c) or clause (d) of sub-section (1) of section 4] does not, by such date as may be prescribed by rule made in that behalf under section 137, elect a person to be a Trustee, the ²[State Government] shall, by notification, appoint a person belonging to such body to be a Trustee; and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by such body.

Appoint-
ment in
default of
election.

9. (1) A person shall be disqualified for being appointed or elected a Trustee if he—

Disqualifi-
cations for
being
appoint-
ed or
elected a
Trustee.

- (a) has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ³[State Government] is hereby empowered to make, if it thinks fit, in this behalf; or
- (b) is an undischarged insolvent; or
- (c) holds any office or place of profit under the Board; or
- (d) has, directly or indirectly, by himself, or by any partner, employer or employee, any share or interest in any contract or employment with, by, or on behalf of, the Board; or
- (e) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in—

- (i) any sale, purchase, lease, or exchange of land, or any agreement for the same; or
- (ii) any agreement for the loan of money, or any security for the payment of money only; or
- (iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted; or
- (iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades;

¹These words were substituted for the words "section 7" by sec. 6 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955.)

²See foot-note 8 on page 288, *ante*.

[Ben. Act V

(Chapter II.—The Board of Trustees.—Sections 10—12.)

or by reason only of his having a share or interest, otherwise than as director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf, of the Board.

The Chair-
man to be
a whole-
time
officer
ordinarily,

¹10. While any person is holding the office of Chairman, he shall not hold any other salaried office and shall devote his whole time and attention to his duties under this Act :

Provided that the ²State Government may require him to hold some other salaried office in addition to the office of Chairman or may permit him to perform any honorary duties which in the opinion of the ³State Government will not interfere with the performance of his duties under this Act.

Remunera-
tion of
Chairman.

11. (1) The Chairman shall receive such monthly salary not exceeding three thousand rupees, as may be fixed by the ³[State Government] :

Provided that, if the Chairman, after having held his office for three years, is re-appointed for a further term of not less than two years, the ³[State Government] may direct that his monthly salary be increased to any sum not exceeding three thousand five hundred rupees.

(2) the word "salary", as used in this section, excludes allowances to which the Chairman may be entitled and any contribution payable on his account under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) The ³[State Government] may, if it thinks fit, direct the payment to the Chairman of a house-rent and conveyance allowance, not exceeding five hundred rupees *per mensem*, in addition to his salary.

⁴(4) If under section 10, the ²State Government requires the Chairman to hold any salaried office in addition to the office of Chairman, the salary and allowances (if any) payable to the Chairman for his holding the office, other than the office of Chairman, or such portion thereof, as the ³State Government may decide, shall, instead of being paid to the Chairman, be payable to the Board for credit to the Revenue Account of the Board.

Leave of
absence or
deputation
of the
Chairman.

12. (1) The ³[State Government] may, after consultation with the Board, grant leave of absence to the Chairman or depute him to other duties, for such period as it thinks fit.

¹This section was substituted for the original section by sec. 3 of the Calcutta Improvement (Amendment) Act, 1948 (West Ben. Act XXII of 1948).

²The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³See foot-note 8 on page 286, *ante*.

⁴This sub-section was added by sec. 4 of the Calcutta Improvement (Amendment) Act, 1948 (West Ben. Act XXII of 1948).

of 1911.]

(Chapter II.—The Board of Trustees.—Sections 13—15.)

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his salary, as may be fixed by the ¹[State Government] :

²Provided that, if the Chairman is a servant of the Government, the amount of such allowance shall be such as he may be entitled to under the conditions of his service under the ³Government relating to transfer to foreign service.

13. (1) ⁴[When] the Chairman is granted leave of absence or deputed to other duties, the ¹[State Government] may appoint a person to act as Chairman ⁵[during the period of leave or deputation, as the case may be.]

Appointment, etc., of acting Chairman.

(2) The salary and house-rent and conveyance allowance (if any) of any person appointed to act as Chairman shall be fixed by the ¹[State Government], subject to the provisions of section 11.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman, and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

14. The Board may permit any Trustee, other than the Chairman or the ⁶[Commissioner of the Corporation], to absent himself from meetings of the Board for any period not exceeding six months.

Leave of absence to other Trustees.

15. (1) The ¹[State Government] may, by notification, declare that any Trustee shall cease to be a Trustee—

Removal of Trustees.

(a) if he has acted in contravention of section 2², or

(b) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or

(c) if he has, without the permission of the Board, been absent from the meetings of the Board for any period exceeding three consecutive months, or

(d) if he is a salaried servant of the Government, and if his continuance in office as a Trustee is, in the opinion of the ¹[State Government], undesirable.

¹See foot-note 8 on page 288, *ante*.

²This proviso was substituted for the original proviso by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴Substituted for the word "Whenever" by sec. 7(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵Added by sec. 7(2), *ibid*.

⁶The words "Executive officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 8 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

[Ben. Act V

(Chapter II.—The Board of Trustees.—Sections 16, 17.)

(2) The ¹[State Government] shall, by notification declare that a Trustee shall cease to be a Trustee—

(i) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 9 ; or

(ii) if he was elected or appointed as being a member of the Corporation, the Bengal Chamber of Commerce or the Bengal National Chamber of Commerce ²[or the Indian Chamber of Commerce or the Bharat Chamber of Commerce] and if he is, at the date of such notification, no longer a member of the Corporation or such Chamber, as the case may be.

(3) If at any time it appears to the ¹[State Government] that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Filling of
casual
vacancies
in certain

16. . If any Trustee be permitted by the Board to absent himself from meetings of the Board for any period exceeding three months,

or if any Trustee, other than the ³[Commissioner of the Corporation], dies, or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification published under section 15,

the vacancy shall be filled, within one month, by a fresh appointment or election under ⁴[sub-section (1) of section 4] or section 8, as the case may be.

Term of
office of
Trustees.

17. (1) The term of office of the first Trustees appointed or elected under ⁵[sub-section (1) of section 4] or section 8, other than the Chairman, shall commence on such day as may be appointed by the ¹[State Government].

¹See foot-note 3 on page 288, *ante*.

²Inserted by sec. 1 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 10(i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴Substituted for the words "section 5, sec 7" by sec. 10(ii) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵Substituted for the words section 5, section 7" by sec. 11 (1), *ibid*.

of 1911.]

(Chapter II.—The Board of Trustees.—Section 18.)

(2) Subject to the provisions of section 15, the term of office of Trustees other than the ¹[Commissioner of the Corporation] shall be as follows :—

- ²(a) the Chairman—such period, as may be fixed by the State Government : provided that the initial term shall not be less than three years ;
- (b) a Trustee appointed or elected in pursuance of section 16 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee ;
- (c) other Trustees—three years :

³Provided that when a vacancy occurs⁴ in the seat⁵ of a member elected under clause (c) or clause (d) of sub-section (1) of section 4 by death or resignation or for any other reason, the bodies concerned shall elect a person to fill the vacancy within such time as the State Government may prescribe by rules, and the Trustee so elected shall hold office as a member of the Board for the residue of the term of office of the member whose seat he is elected to fill.

(3) Any Trustee shall, if not disqualified for any of the reasons mentioned in section 9, be eligible for re-appointment or re-election at the end of his term of office.

Conduct of Business.

18. The Board shall meet, and shall from time to time make such arrangements with respect to the place, day, hour, notice, management and adjournment of their meetings, as they may think fit, subject to the following provisions namely :—

Meetings of Board.

- (a) an ordinary meeting shall be held once at least in every month ;
- (b) the Chairman may, whenever he thinks fit, and shall upon the written request of not less than two other Trustees, call a special meeting ;
- (c) the Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause ;
- (d) no business shall be transacted at any meeting unless at least half of the existing number of the Trustees are present from the beginning to the end of the meeting ;

¹The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 11(2) (a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the former clause by sec. 11(2)(b), *ibid.*

³Proviso added by sec. 11(2)(c), *ibid.*

(Chapter II.—The Board of Trustees.—Sections 19, 20.)

- ¹(e) every meeting shall be presided over by the Chairman and in his absence, by a Trustee chosen by the Trustees present to preside over the meeting ;
- (f) all questions shall be decided by a majority of votes of the Trustees present, the person presiding having a second or casting vote in all cases of equality of votes ;
- (g) if a poll be demanded, the names of the Trustees voting, and the nature of their votes, shall be recorded by the person presiding ;
- ²(h) minutes of the proceedings of each meeting (together with the names of the Trustees present) shall be recorded and such minutes shall be—
 - (i) read at the next ensuing meeting by the person presiding at such meeting,
 - (ii) signed by the person presiding at such meeting, and
 - (iii) open to inspection by any Trustee during office hours.

Temporary association of members with the Board for particular purposes.

19. (1) The Board may associate with themselves, in such manner and for such period as may be prescribed by rules made under section 138 ³[any person or persons] whose assistance or advice they may desire in carrying out any of the provisions of this Act.

(2) A person associated with themselves by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relative to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member of the Board for any other purpose.

Constitution and functions of Committees.

20. (1) The Board may from time to time appoint Committees consisting of such persons of any of the following classes as they may think fit, namely :—

- (i) Trustees,
- (ii) persons associated with the Board under section 19,
- (iii) other persons whose assistance or advice the Board may desire as members of Committees :

Provided that no Committee shall consist of less than three persons.

(2) The Board may—

- (a) refer to such Committees, for inquiry and report, any matter relating to any of the purposes of this Act, and
- (b) delegate to such Committees, by specific resolution, and subject to any rules made under section 138, any of the powers or duties of the Board.

(3) The Board may at any time dissolve, or, subject to the provisions of sub-section (1), alter the constitution of, any such Committee.

¹Clause (e) was substituted for the former clause by sec. 12(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Clause (h) was substituted for the former clause by sec. 12(2), *ibid.*

³Substituted for the words "any persons" by sec. 13, *ibid.*

of 1911.]

(Chapter II.—The Board of Trustees.—Sections 21—23.)

(4) Every such Committee shall conform to any instructions from time to time given to them by the Board.

(5) All proceedings of any such Committee shall be subject to confirmation by the Board,

21. (1) Committees appointed under section 20 may meet and adjourn as they think proper; but the Chairman may, whenever he thinks fit, call a special meeting of any Committee, and shall call a special meeting of any Committee upon the written request of not less than two members thereof.

Meetings
of Commit-
tees.

(2) The person to preside at a meeting of a Committee shall be the Chairman, if he is a member of the Committee, or, if he is not a member ¹[or is absent], then the members present shall choose one of their number to preside.

(3) No business shall be transacted at any meeting of a Committee unless at least half the number of the members of the Committee are present from the beginning to the end of the meeting.

(4) All questions at any meeting of a Committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

22. Every Trustee (other than the Chairman), and every person associated with the Board under section 19, shall be entitled to receive a fee of twenty rupees, and every member of a Committee shall be entitled to receive a fee of ten rupees, for each meeting of the Board or the Committee—

Fees for
attendance
at
meetings.

(i) at which a quorum is present and business is transacted, and

(ii) which he attends * * * * *

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by any rule made under section 137 in this behalf.

23. (1) A Trustee who—

(a) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 9, in respect of any matter, or

(b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceeding of the Board or any Committee relating to such matter.

Trustees
and asso-
ciated
members
of Board
or Com-
mittee
not to take
part in
proceedings
in which
they are
personally
interested.

¹Inserted by sec. 14 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²The words "from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee" were omitted by sec. 15, *ibid.*

[Ben. Act V

(Chapter II.—The Board of Trustees.—Sections 24—25.)

(2) If any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in an area in which it is proposed to acquire land for any of the purposes of this Act,—

- (i) he shall, before taking part in any proceeding at a meeting of the Board or any Committee relating to such area, inform the person presiding at the meeting of the nature of such interest,
- (ii) he shall not vote at any meeting of the Board or any Committee upon any resolution or question relating to such land, and
- (iii) he shall not take any other part in any proceeding at a meeting of the Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

24. The Board may ¹[perform all such functions or] enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

²24A. The Board may determine either generally for any class of cases or specially for any particular case whether the work should be executed or materials purchased by contract or otherwise.

25. (1) Every such contract shall be made on behalf of the Board by the Chairman :

³Provided that a contract involving an expenditure exceeding five thousand rupees shall not be made by the Chairman without the previous sanction of the Board :

⁴Provided further that a contract involving an expenditure exceeding five *lakhs* of rupees shall not be made without the previous sanction of the State Government ;

(2) Every estimate for the expenditure of any sum for carrying out any of the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (1) to make or sanction the making of a contract involving the expenditure of a like sum.

¹Inserted by sec. 16 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Sections 24A was inserted by sec. 17, *ibid.*

³These provisos were substituted for the former proviso by sec. 18(a), *ibid.*

Power to make and perform contracts.

Power of Board to determine if execution of work, etc., should be by contract.

Execution of contracts and approval of estimates.

of 1911.]

(Chapter II.—The Board of Trustees.—Sections 26, 27.)

(3) Sub-sections (1) and (2) shall apply to every variation
1* * * of a contract or estimate, as well as to an original
contract or estimate.

26. (1) Every contract made by the Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman if such contract were made on his own behalf, except that the common seal of the Board shall be used (where necessary); and every such contract may in the like manner and form be varied or discharged.

Further provision as to execution of contracts, and provision as to seal of Board.

(2) Every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing and shall be sealed.

(3) The common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the presence of a Trustee (other than the Chairman), who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(4) The signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument.

(5) a contract not executed as provided in this section shall not be binding on the Board.

27. (1) At least seven days before the Chairman enters into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding ²[five thousand] rupees, he shall give notice by advertisement in local newspapers inviting tenders for such contract :

Tenders.

³Provided that the Board may, at the instance of the Chairman and with the sanction of the State Government, for reasons which shall be recorded in the proceedings, authorize the Chairman to enter into a contract without inviting tenders.

(2) In every such case the Chairman shall place before the Board the specifications, conditions and estimates and all the tenders received, specifying the particular tender (if any) which he proposes to accept.

(3) In every case in which the acceptance of a tender would involve an expenditure exceeding ⁴[five lakhs] of rupees, the Board shall submit to the ⁵[State Government] the specifications, conditions and estimates, and all the tenders received, specifying the particular tender (if any) the acceptance of which they propose to sanction.

¹The words "or abandonment" were omitted by sec. 18(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "one thousand" by sec. 19(1), *ibid.*

³This proviso was added by sec. 19(2), *ibid.*

⁴Substituted for the words "one lakh" by sec. 19(3), *ibid.*

⁵See foot-note 3 on page 288, *ante.*

[Ben. Act V**(Chapter II.—The Board of Trustees.—Sections 28—31.)**

(4) Neither the Board nor the ¹[State Government] shall be bound to sanction the acceptance of any tender which has been made ; but the Board, within the pecuniary limits of their powers, as prescribed in section 25, sub-section (1), or the ¹[State Government], may sanction the acceptance of any of such tender which appears to them, upon a view of all the circumstances, to be the most advantageous, or may direct the rejection of all the tenders submitted to them.

Security
for perfor-
mance of
contract.

28. The Chairman shall take sufficient security for the due performance of every contract involving an expenditure exceeding one thousand rupees.

Supply of
documents
and infor-
mation
to the
Govern-
ment.

29. (1) The Chairman shall forward to the ¹[State Government] a copy of the minutes of the proceedings of each meeting of the Board, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in section 18, clause (h).

(2) If the ¹[State Government] so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Board for consideration at any meeting.

(3) The ¹[State Government] may require the Chairman to furnish it with—

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board, or

(b) a report on any such matter, or

(c) a copy of any document in the charge of the Chairman.

Officers and Servants.

Statement
of strength
and
remunera-
tion of
staff.

30. The Board shall from time to time prepare, and shall maintain, a statement showing—

(a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is charged to temporary work) whom they consider it necessary and proper to employ for the purposes of this Act,

(b) the amount and nature of the salary, fees and allowances to be paid to each such officer and servant, and

(c) the contributions payable under section 146 in respect of each such officer and servant.

Board to
make rules.

31. The Board shall from time to time make rules—

(a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security ;

¹ See foot-note 3 on page 288, *ante*.

of 1911.]

(Chapter II.—The Board of Trustees.—Section 32.)

- (b) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Board ; ^{1**}
- (c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any ²[servant of the Government] in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the ³[Board ;]
- ⁴(d) regulating the compassionate allowance and gratuities to officers and servants of the Board and families of deceased officers and servants ;
- ⁴(e) prescribing the qualifications for employment of officers and servants of the Board ; and
- ⁴(f) regulating the conduct of officers and servants of the Board :

⁵Provided that a servant of the ⁶[Government] employed as an officer or servant of the Board shall not be entitled to leave or leave allowances otherwise than as may be prescribed by the conditions of his service under the ⁶[Government] relating to transfer to foreign service.

32. Subject to any directions contained in any statement prepared under section 30 and any rules made under section 31, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

Powers of appointment, etc., in whom vested.

- (a) in the case of officers and servants whose monthly salary does not exceed three hundred rupees—in the Chairman, and
- (b) in other cases—in the Board :

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Board, whose decision shall be final.

¹The word "and" was omitted by sec. 20(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²The words "Servant of the Crown" were originally substituted for the words "servant of the Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³Substituted for the word "Board" by sec. 20(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴Clauses (d), (e) and (f) were added by sec. 20(3), *ibid.*

⁵This proviso was substituted for the original proviso by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶See foot. note 3 on page 293, *ante*.

(Chapter II.—The Board of Trustees.—Sections 33—35.)

Sanction
of State
Government
required
to certain
statements,
rules and
orders.

33. (a) All statements prepared under section 30, so far as they relate to officers carrying a salary of more than one thousand rupees *per mensem*.

(b) all rules made under ¹[clause (b), clause (c), clause (d), clause (e) or clause (f)] of section 31, and

(c) all orders passed by the Board under section 32, and relating to any officer appointed to hold an office carrying a salary of more than one thousand rupees *per mensem*, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the ²[State Government].

Control
by
Chairman.

34. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board ; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

35. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made hereunder, except those conferred or imposed upon or vested in him by sections 18, 21, 29, 55, 108, 112, 116, 118, 154 and 158 :

Provided as follows :—

(a) the Chairman shall not delegate his power under section 25 to make on behalf of the Board any contract involving an expenditure exceeding one thousand rupees ;

(b) the Chairman shall not delegate his power under section 32 to make appointments to offices carrying a salary of more than one hundred rupees *per mensem* ;

(c) the Chairman shall not delegate to any officer his power under section 32 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

¹Substituted for the words "clause (b) or clause (c)" by sec. 21 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²See foot-note 3 on page 288, *ante*.

of 1911.]

(Chapter III.—Improvement Schemes.—Sections 35A—35C.)

CHAPTER III.

¹[IMPROVEMENT SCHEMES].

***35A.** The Board may, subject to the provisions of this Act, undertake any works and incur any expenditure for the improvement and development of any area to which this Act applies and for the framing and execution of such improvement schemes as may be necessary from time to time.

Under-taking of works and incurring of expenditure for development of areas.

***35B.** When framing an improvement scheme in respect of any area, regard shall be had to—

Matters to be considered when framing improvement schemes.

- (a) the nature and the conditions of neighbouring areas and of Calcutta as a whole ;
- (b) the several directions in which the expansion of Calcutta appears likely to take place ; and
- (c) the likelihood of improvement schemes being required for other parts of Calcutta.

***35C.** (1) An improvement scheme may provide for all or any of the following matters, namely :—

Matters to be provided for in improvement schemes.

- (a) the acquisition by the Board of any land in the area comprised in the scheme, which will in their opinion be required for or affected by the execution of the scheme ;
- (b) the laying out or re-laying out of the land comprised in the scheme ;
- (c) the demolition, alteration or reconstruction of buildings or portions of buildings situated on the land which it is proposed to acquire in the said area ;
- (d) the construction of any building which the Board may consider necessary to erect for carrying out any of the purposes of this Act ;
- (e) the laying out or construction or alteration of streets (including bridges, causeways, culverts), if required, and the levelling, paving, metalling, flagging and channelling of such streets and planting of flower bushes or trees on the sides of such streets ;
- (f) the sewerage and draining of such streets and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a municipality ;

¹Substituted for the heading "Improvement Schemes and Re-housing Schemes" by sec. 22 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Secs. 35A, 35B, 35C and 35D were inserted by sec. 28, *ibid.*

[Ben. Act V

(Chapter III.—Improvement Schemes.—Sections 35D, 36.)

- (g) raising, lowering or levelling of any land in the area comprised in the scheme ;
 - (h) the provision of accommodation for any classes of inhabitants ;
 - (i) the formation and retention of open spaces, gardens, parks, play-grounds, lakes, and the provision therein of athletic tracks and stadiums, recreation buildings and structures and other necessary aids to field and aquatic sports, arboriculture and any other objects which the Board consider desirable to provide ;
 - (j) controlling the use of land developed by the Board by zoning or reserving areas for specific purposes ;
 - (k) any other matters consistent with this Act, which the Board may think fit.
- (2) When areas are reserved for specific purposes, under clauses (i) and (j) of sub-section (1), it shall be the duty of the Corporation or the Commissioners of the municipality, within whose jurisdiction such areas are situate, to prohibit and prevent their use in violation of such purposes.

Types of
improvement
schemes.

¹35D. An improvement scheme may be of one of the following types or a combination of any two or more of such types or of any special features thereof, that is to say—

- (a) a general improvement scheme,
- (b) a street scheme,
- (c) a housing accommodation scheme,
- (d) a re-housing scheme.

When
general
improvement
scheme
may be
framed.

²36. Whenever it appears to the Board, whether upon official representation made under section 37 or without such representation,—

- (a) that any buildings in any area which are used as dwelling places are unfit for human habitation, or
- (b) that danger to the health of the inhabitants of any area or of a neighbouring area is caused by—
 - (i) the narrowness, closeness and bad arrangement and conditions of streets or buildings or groups of buildings in such area, or
 - (ii) the want of light, air, ventilation or proper conveniences in such area, or
 - (iii) any other sanitary defects in such area, or

¹ See foot-note 2 on page 808, *ante*.

² Substituted for the former section 36 by sec. 24 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXIII of 1955).

of 1911.]

(Chapter III.—Improvement Schemes.—Sections 37, 38.)

- (c) that any area is undeveloped or has been developed without a satisfactory plan or design and that it is necessary to develop or re-develop it on a better plan after incorporating all or some of the improvements mentioned in section 35C,

the Board may pass a resolution to the effect that a general improvement scheme ought to be framed in respect of such area and may then proceed to frame such a scheme.

Authority for making an official representation for a general improvement scheme.

37. (1) An official representation referred to in section 36 may be made by the Corporation—

- (a) of their own motion ; or
- (b) on a written complaint by the ¹[Commissioner] of the Corporation ; or
- (c) in respect of any area comprised in a municipal ward,—on a written complaint signed by twenty-five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under ²[the Calcutta Municipal Act, 1951.]

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of 1951.

(2) If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they shall cause a copy of such complaint to be sent to the Board, with a statement of the reasons for their decision.

Consideration of official representations.

38. (1) The Board shall consider every official representation made under section 37, and, if satisfied as to the truth thereof and to the sufficiency of their resources, shall decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate their decision to the Corporation.

(2) If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they shall inform the Corporation of the reasons for their decision.

(3) If the Board fail, for a period of twelve months after the receipt of any official representation made under section 37 to intimate their decision thereon to the Corporation,

or if the Board intimate to the Corporation their decision that it is not necessary or expedient to frame a general improvement scheme forthwith,

the Corporation may, if they think fit, refer the matter to the ³[State Government].

¹Substituted for the words "Health Officer" by sec. 25(1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "the Calcutta Municipal Act, 1928" by sec. 25(2), *ibid.*

³See footnote 8 on page 288, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes.—Sections 39—39B.)

(4) The ¹[State Government] shall consider every reference made to it under sub-section (3), and

(a) if it considers that the Board ought, under all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Board to pass a decision within such further period as the ¹[State Government] may think reasonable, or

(b) if it considers that it is, under all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Board to proceed forthwith to frame a scheme.

(5) The Board shall comply with every direction given by the ¹[State Government] under sub-section (4).

When
street
scheme
may be
framed.

39. Whenever the Board are of opinion that, for the purpose of—

- (a) providing building-sites, or
- (b) remedying defective ventilation, or
- (c) creating new, or improving existing, means of communication and facilities for traffic, or
- (d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

Housing
accom-
modation
scheme.

²93A. Whenever the Board are of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of persons in any area to which this Act applies, the Board may frame a scheme to be called a housing accommodation scheme, for the aforesaid purpose.

²93B. The Board may frame schemes (in this Act called rehousing schemes) for the construction, maintenance and management of such and so many dwellings, shops and other classes of accommodation as they may consider ought to be provided for persons who—

- (a) are displaced by the execution of any improvement scheme sanctioned under this Act, or
- (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the State Government for sanction under this Act.

¹See foot-note 3 on page 288, *ante*.

²Sections 89A, 89B and 89C were inserted by sec. 26 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter III.—Improvement Schemes.—Sections 39C—43.)

193C. (1) When a general improvement scheme mentioned in section 36 or a housing accommodation scheme mentioned in section 39A or a combination of both, is likely to involve displacement of persons dwelling in a *bustee*, provisions for rehousing such persons shall be made either in the same scheme or by another scheme and the scheme or schemes, as the case may be, together with a statement of the rent or rents proposed to be charged for such rehousing, shall be submitted to the State Government for its approval before any steps are taken under section 43.

Provisions to be made for the rehousing of *bustee* dwellers in the case of certain schemes.

(2) In considering the scheme or schemes submitted under sub-section (1), the State Government shall have regard to the rent or rents indicated in the said scheme or schemes for accommodation to be provided for the displaced *bustee*-dwellers, and may, if necessary, give financial aid to the Board in order that the rent may be such as, in the opinion of the State Government, is reasonable, and also lay down the conditions for giving such aid before the scheme or schemes is or are sanctioned under section 48.

(3) The Board shall be entitled to proceed to execute under section 49 any scheme referred to in sub-section (1) provided that no *bustee*-dwellers are displaced until arrangements for rehousing them have previously been made.

40. [Matters to be considered when framing improvement schemes.—Omitted by sec. 27 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

41. [Matters which must be provided for in improvement schemes.—Omitted by sec. 27 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

42. [Matters which may be provided for in improvement schemes.—Omitted by sec. 27 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).]

43. (1) When any improvement scheme has been framed, the Board shall prepare a notice, stating—

- (a) the fact that the scheme has been framed,
- (b) the boundaries of the area comprised in the scheme, and
- (c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire ²[and of the land in regard to which it is proposed to recover a betterment fee], may be seen at reasonable hours.

Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants.

¹See foot-note 2 on page 306, *ante*.

²These words were inserted by sec. 8 of the Calcutta Improvement (Amendment) Act, 1981 (Ben. Act VIII of 1981),

[Ben. Act V

(Chapter III.—Improvement Schemes.—Sections 44, 45.)

(2) The Board shall—

- (i) cause the said notice to be published weekly for three consecutive weeks in the ¹[Official Gazette] and in local newspapers, with a statement of the period within which objections will be received, and

Page 308—

In clause (ii) of sub-section (2) of section 43, *after* the words "in which", insert the words "and to the General Manager of the Calcutta Metropolitan Water and Sanitation Authority within whose jurisdiction,".

- (3) The Chairman shall cause copies of an ~~document~~ to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

44. The "[Commissioner of the Corporation], and the Chairman of any Municipality to whom a copy of a notice has been sent under clause (ii) of section 43, shall, within a period of sixty days from the receipt of the said copy, forward to the Board any representation which the Corporation or Municipality may think fit to make with regard to the scheme.

Page 308—

For section 44, *substitute* the following section, namely:—

"Transmission to Board of 44. The Commissioner of the Corporation, Municipality or Municipality and the General Manager of the Calcutta Metropolitan Water and Sanitation Authority, to whom a copy of a notice has been sent under clause (ii) of sub-section (2) of section 43, shall, within a period of sixty days from the receipt of the said copy forward to the Board any representation which the Corporation, Municipality or the Authority may think fit to make with regard to the scheme."

¹ See foot-note 5 on page 307.

"The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939) and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 28 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

"These figures were substituted for the figures "1884" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

"The words "Executive Officer of the Corporation" in secs. 44 and 46 were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by secs. 29 and 31, respectively, of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

"These words were inserted by sec. 4(1) of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

Transmission to Board of representation by Corporation or Municipality as to improvement schemes.

Service of notice as to proposed acquisition of land or recovery of betterment fee.

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(Chapter III.—Improvement Schemes.—Sections 46, 47.)

(ii) the occupier (who need not be named) of each premises or holding entered in the municipal assessment-book, which the Board propose to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Board propose to acquire such land ¹[or to recover such betterment fee] for the purpose of carrying out ²[an improvement scheme], and

(b) require such person, if he dissents from such acquisition ³[or from the recovery of such betterment fee], to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the Chairman.

46. The ⁴[Commissioner of the Corporation], and the Chairman of any Municipality constituted under the Bengal Municipal Act, ⁵[1932], in any part of which this section is for the time being in force, shall, respectively, furnish the Chairman, at his request, with a copy of, or extracts from, the municipal assessment-book at such charges as may be fixed by rule made under section 137.

Furnishing of copy of, or extracts from, the municipal assessment-book.

47. (1) After the expiry of the periods respectively prescribed under section 43, clause (i), and by section 44 and section 45, clause (b), in respect of any improvement scheme, the Board shall consider any objection, representation and statement of dissent received thereunder, and, after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the ⁶[State Government] for sanction to the scheme, with such modifications (if any) as the Board may consider necessary.

Abandonment of improvement scheme, or application to State Government to sanction it.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme ;

¹These words were inserted by sec. 4 (2) of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

²Substituted for the words "a general improvement scheme or a street scheme, as the case may be" by sec. 30 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³These words were inserted by sec. 4(3) of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴See foot-note 4 on page 309, *ante*.

⁵See foot-note 3 on page 308, *ante*.

⁶See foot-note 3 on page 288, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes.—Sections 48—50.)

- (b) a statement of the reasons for any modifications made in the scheme as originally framed ;
- (c) a statement of objections (if any) received under section 43 ;
- (d) any representation received under section 44 ;
- (e) a list of the names of all persons (if any) who have dissented, under section 45, clause (b), from the proposed acquisition of their land ¹[or from the proposed recovery of a betterment fee], and a statement of the reasons given for such dissent ; and
- (f) a statement of the arrangements made or proposed by the Board for the re-housing of persons ²* * * who are likely to be displaced by the execution of the scheme.

(3) When any application has been submitted to the ³[State Government] under sub-section (1), the Board shall cause notice of the fact to be published for two consecutive weeks in the ⁴[Official Gazette] and in local newspapers.

Power to
sanction or
reject
improvement
scheme.

48. The ⁵[State Government] may sanction, either with or without modification, or may refuse to sanction, any improvement scheme submitted to it under section 47.

Notification
of
sanction to
improvement
scheme.

49. (1) Whenever the ⁶[State Government] sanctions an improvement scheme, it shall announce the fact by notification, and the Board shall forthwith proceed to execute the scheme.

(2) The publication of a notification under sub-section (1), in respect of any scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration
of
improvement
scheme
after
sanction.

50. At any time after any improvement scheme has been sanctioned by the ⁷[State Government], and before it has been carried into execution, the Board ⁸[may alter or cancel it] :

Provided as follows :—

- (a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five *per cent.* of such cost, such alteration shall not be made without the previous sanction of the ⁹[State Government] ;

¹These words were inserted by sec. 5 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931.)

²The words "of the poorer and working classes" were omitted by sec. 32 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³See foot-note 3 on page 288, *ante*.

⁴See foot-note 3 on page 290, *ante*.

⁵Substituted for the words "may alter it" by sec. 23 (1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

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(Chapter III.—Improvement Schemes.—Sections 51—53.)

(b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the ¹[State Government], the procedure prescribed in the foregoing sections of this chapter shall, so far as applicable, be followed, as if the alteration were a separate scheme ;

²(c) if, owing to changes made in the course of a scheme, any land not previously liable under the scheme to the payment of a betterment fee, becomes liable to such payment, the provisions of sections 43, 45 and 47 shall, so far as they are applicable, be followed in any such case.

³(d) no scheme shall be cancelled without giving the Corporation or the Municipality, as the case may be, an opportunity to express its views within sixty days of the receipt of the notice of the cancellation and without previous sanction of the State Government.

51. Any number of areas in respect of which improvement schemes have been, or are proposed to be framed, may at any time be included in one combined scheme.

Combina-
tion of
improve-
ment
schemes.

52. [Re-housing persons displaced by improvement schemes.—
Omitted by sec. 34 of the Calcutta Improvement
(Amendment) Act, 1955 (West Ben. Act XXXII of
1955.)

53. No street laid out or altered by the Board shall be of less width than

Width of
streets.

(a) forty feet, if the street be intended for carriage traffic,
or

(b) twenty feet, if the street be intended for foot traffic
only :

Provided as follows :—

(i) the width of an existing street need not be increased to the minimum required by this section, if the Board consider it impracticable to do so ;

(ii) nothing in this section shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.

¹Clause (c) was added by sec. 6 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

²Clause (d) of the proviso was added by sec. 38(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

(Chapter III.—Improvement Schemes.—Section 54.)

Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality.

¹54. (1) Whenever any building, or any street, square or other land, or any part thereof, which—

(a) is situated in the Calcutta Municipality and is vested in the Corporation, or

(b) is situated in any part of any Municipality constituted under the Bengal Municipal Act, ²[1932], in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

Ben. Act
XV of
1932.

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the ³[Commissioner of the Corporation] or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (3) :

⁴Provided that the Corporation or the Commissioners, as the case may be, shall be allowed reasonable opportunity to remove at their cost any under-ground pipes, cables or other fixtures belonging to them if they so desire.

(2) Where any land vests in the Board under the provisions of sub-section (1) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it reverts in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (1) of section 65 or a resolution passed by the Board under sub-section (2) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

(3) Where any land or building vests in the Board under sub-section (1) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or

¹Section 54 was substituted for the original section by sec. 2 of the Calcutta Improvement (Amendment) Act, 1928 (Ben. Act IX of 1928).

²See foot-note 9 on page 308, *ante*.

³The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 35(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴Proviso added by sec. 35(b), *ibid*.

of 1911.]

(Chapter III.—Improvement Schemes.—Section 55.)

building to the Board, a sum equal to the market value of the said land or building ¹[as on the date of the publication of the notification under section 49] and where any building, situated on land in respect of which a declaration has been made by the Board under sub-section (2), is vested in the Board under sub-section (1), like compensation shall be payable in respect of such building by the Board.

(4) If, in any case where the Board have made a declaration to the Corporation in respect of any land under sub-section (2), the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revert in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be less than the market value which would have been payable for the said land under the provisions of sub-section (3).

(5) If any question of dispute arises—

- (a) as to whether compensation is payable under sub-section (3) or sub-section (4), or
- (b) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) or sub-section (4), or
- (c) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,

the matter shall be referred to the ²[State Government], whose decision shall be final.

55. (1) Whenever any street or square or part thereof which is not vested in the Board or in the Corporation or in the Commissioners of any Municipality constituted under the Bengal Municipal Act, ³[1932], is required for executing any improvement scheme, the Board shall cause to be affixed in a conspicuous place in or near such street, square or part, a notice, signed by the Chairman, and

- (a) stating the purpose for which the street, square or part is required, and

Transfer of private street or square to Board for purposes of improvement scheme.

Ben.
XV of
1932.

¹Substituted for the words "at the time when the general declaration in respect of other lands included in the scheme is made under the provisions of section 6 of the Land Acquisition Act, 1894, as amended by this Act, by sec. 85(c) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²See foot-note 3 on page 288, *ante*.

³See foot-note 3 on page 308, *ante*.

[Ben. Act V]

(Chapter III.—Improvement Schemes.—Section 56.)

- (b) declaring that the Board will, on or after a date to be specified in the notice, take over charge of such street, square or part from the owner thereof,

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Board may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Board.

^a(3) When the Board alter or close any street or square or part thereof which has vested in them under sub-section (2), they shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Board—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and,

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or waterwork to replace another situated on land vested in the Board under section 54 or section 55.

56. (1) When any building, or any street, square or other land, or any part thereof, has vested in the Board under section 54 or section 55, no municipal drain or waterwork therein shall vest in the Board until another drain or waterwork (as the case may be), if required, has been provided by the Board, to the satisfaction of the ¹[Corporation of Calcutta] or of the Commissioners of the Municipality constituted under the Bengal Municipal Act, ²[1932], as the case may be, in place of the former drain or work.

Ben. Act
XV of
1932.

(2) If any question or dispute arises as to whether another drain or waterwork is required, or as to the sufficiency of any drain or waterwork provided by the Board, under sub-section (1), the matter shall be referred to the ³[State Government] whose decision shall be final.

¹These words were substituted for the words "General Committee" sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1 (Ben. Act I of 1932).

²See foot-note 3 on page 308, *ante*.

³See foot-note 3 on page 288, *ante*.

of 1911.]

(Chapter III.—Improvement Schemes.—Sections 57—60.)

West Ben.
Act XXXIII
of 1951.

57. (1) ¹[Sections 350, 351, 362 and clause (c) of section 361 of the Calcutta Municipal Act, 1951] shall not apply to any street which is vested in the Board.

(2) ²[Rules 5 and 6 in Schedule XV to] the said Act shall not apply when any drain, pavement or surface referred to in the said ³[rule 5] is opened or broken up by the Board or when any public street is under construction by the Board.

58. Whenever the Board allow any street vested in them to be used for public traffic,—

(a) they shall, as far as practicable, keep the street in good repair and do all things necessary for the safety and convenience of persons using it, and

(b) they shall cause the street to be watered, if they consider it necessary to do so for the public convenience.

59. Whenever any drain in, or the pavement or surface of, any street vested in the Board is opened or broken up by the Board for the purpose of carrying on any work,

or whenever the Board allow any street which they have under construction to be used for public traffic,

the Board shall cause the place to be fenced and guarded and to be sufficiently lighted during the night, and shall take proper precautions for guarding against accident by shoring up and protecting adjoining buildings,

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby or complete the construction of the said street, as the case may be.

60. (1) When any work referred to in section 59 is being executed by the Board in any public street vested in them, or when any other work which may lawfully be done is being executed by the Board in any street vested in them, the Board may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(2) When any such direction has been given, the Board shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix such bars,

Bar to application of certain sections of the Calcutta Municipal Act, 1951, to streets vested in the Board.

Repair and watering of streets vested in the Board.

Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.

Prevention or restriction of traffic in street vested in the Board, during progress of work.

¹Substituted for the words "sections 296, 297 and 307, and clause (c) of section 306, of the Calcutta Municipal Act, 1923" by sec. 86(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "Rules 4 and 5 in Schedule XVI to" by sec. 86(b)(i), *ibid.*

³Substituted for the word and figure "rule 4" by sec. 86(b)(ii), *ibid.*

(Chapter III.—Improvement Schemes.—Sections 61, 62.)

chains or posts across or in the street as they may think proper for preventing or restricting traffic therein, after notifying in local newspapers their intention to do so.

Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them.

61. (1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for—

- (a) the passage or diversion of traffic ;
- (b) securing access to all premises approached from such street ; and
- (c) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

Power of Board to turn or close public street or square vested in them

62. (1) The Board may—

- (a) turn, divert, discontinue the public use of, or permanently close, any public street vested in them or any part thereof, or
- (b) discontinue the public use of, or permanently close, any public square vested in them, or any part thereof.

(2) Whenever the Board discontinue the public use of, or permanently close, any public street vested in them or any part thereof, they shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Board discontinue the public use of, or permanently close, any public square vested in them, or any part thereof, they shall pay reasonable compensation to every person—

- (a) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or
- (b) whose immovable property was ventilated by such square or part,

and who has suffered damage,—

- (i) in case (a), from such discontinuance or closing, or
- (ii) in case (b), from the use to which the Board have put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued, or closed.

(5) When any public street or square vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell, or lease so much of the same as is no longer required.

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(Chapter III.—Improvement Schemes.—Section 63.)

¹63. ²(1) The Board may from time to time in regard to any area—

Projected
public
streets.

- (a) within the Calcutta Municipality, or
- (b) in the neighbourhood of the said municipality,
make plans of—
 - (i) proposed public streets showing the direction of such streets, the street alignment and building line (if any), on each side of them, their intended width and such other details as may appear desirable, and
 - (ii) proposed public parks showing such details as may appear desirable.

(2) When a plan of a proposed public street ³[or a proposed public park] has been made under sub-section (1), the Board shall prepare a notice stating—

- (a) the fact that such plan has been made,
- (b) particulars of the land (shown in such plan) ⁴[comprised within the proposed public park or] through which the proposed public street will pass.
- (c) the place at which the said plan and particulars may be seen at reasonable hours, and
- (d) the period (which shall be not less than sixty days) within which objections to the said plan may be submitted to the Board ;

and the Board shall thereupon—

- (i) cause the said notice to be published weekly for two consecutive weeks in the ⁵[Official Gazette] and in local newspapers, and in such other manner as the Board may direct, and
- (ii) forward a copy of the said notice to any person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land included within the proposed public street ⁶[or the proposed public park], and

¹Section 63 was substituted for the original section by sec. 8 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²Substituted for former sub-section (1) by sec. 87(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³Inserted by sec. 87(b) (i), *ibid.*

⁴Inserted by sec. 87(b) (ii), *ibid.*

⁵See foot-note 8 on page 289, *ante*.

⁶Inserted by sec. 87(b) (iii), of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

(Chapter III.—Improvement Schemes.—Section 63.)

- (iii) forward a copy of the said notice and of the plan, to which it relates to the ¹[Commissioner of the Corporation] and, if any area in the neighbourhood of the Calcutta Municipality is included in such plan, to the Chairman of the local authority administering any portion of such area, and
- (iv) cause copies of the said notice and plan to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.
- (3) On or after a date (not being less than sixty days from the date of the first publication of the notice) to be appointed by the Board in this behalf, the Board shall consider—
- (a) all objections in writing received from any person affected by the proposed public street ²[or the proposed public park] contemplated by such plan, and
- (b) any representation in regard to such street ³[or public park] made to the Board by the Corporation or the aforesaid local authority ;
- and the Board may thereupon either withdraw the plan or apply to the ⁴[State Government] for sanction thereto with such modification (if any) as the Board may consider necessary.
- (4) If the Board apply for sanction as provided in sub-section (3) they shall simultaneously forward to the ⁴[State Government] a full statement of all objections and representations made to them under the said sub-section.
- (5) When a plan of a proposed public street ⁵[or a proposed public park] has been submitted to the ⁴[State Government] under sub-section (3), the Board shall cause notice of the fact to be published for two consecutive weeks in the ⁶[Official Gazette] and in local newspapers.
- (6) The ⁴[State Government] may sanction, either with or without modification, or may refuse to sanction, any plan of a proposed public street ⁵[or a proposed public park] submitted to it under sub-section (3).
- (7) Whenever the ⁴[State Government] sanctions a plan of a proposed public street ⁷[or a proposed public park], it shall

¹The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 37(b) (iv) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Inserted by sec. 37(c) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³Inserted by sec. 37 (c) (ii) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴See foot-note 3 on page 288, *ante*.

⁵Inserted by sec. 37 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁶See foot-note 8 on page 289, *ante*.

⁷Inserted by sec. 37 (s) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter III.—Improvement Schemes.—Section 63.)

announce the fact by notification, and the publication of such notification shall be conclusive evidence that the plan has been duly made and sanctioned ;

and the proposed public street ¹[or a proposed public park] to which such notification refers shall be deemed to be a projected public street ²[or a projected public park], and shall be so deemed until—

(a) such street ³[or park] has been declared, under section 65 or section 66, as the case may be, to be a public street ⁴[or park], or

(b) the said notification has been cancelled by another notification :

Provided that such cancellation shall not affect the validity of any action taken by the Board in pursuance of the said notification.

(8) If any person desires to erect, re-erect or add to any wall (exceeding ten feet in height) or building which falls within ⁴[the area comprised in a projected public park or within] the street alignment or building line of a projected public street shown in any plan sanctioned by the ⁵[State Government] under this section, he shall submit an application in writing to the Chairman for permission so to do :

Provided as follows :—

(i) no such application shall be necessary for permission to erect or re-erect, between a building line and the street alignment,—

(a) a porch or balcony, or

(b) along not more than one-third of the frontage, an out-house not exceeding fifteen feet in height ;

(ii) nothing in this sub-section shall relieve any person from the liability to obtain such sanction as it may be necessary to obtain under any law for the time being in force from any local authority.

(9) The Chairman shall in no case refuse an application submitted under sub-section (8) if the applicant executes an agreement binding himself and his successors in interest to remove, without compensation, any wall or building to which that application relates, in the event of the Board—

¹Inserted by sec. 87 (e) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Inserted by sec. 87 (e) (ii), *ibid.*

³Inserted by sec. 87 (e) (iii), *ibid.*

⁴Inserted by sec. 87 (f), *ibid.*

⁵See foot-note 8 on page 288, *ante*.

(Chapter III.—Improvement Schemes.—Section 63.)

(a) deciding (at any time after an improvement scheme has been sanctioned under section 48 for an area within which such building or wall is situate) that the said wall or building, or any portion thereof, ought to be removed, and

(b) calling upon the owner for the time being, by written notice, to remove the same within a time (not being less than sixty days from the date of the service of the notice) to be specified in the said notice.

(10) If the Chairman does not, within thirty days from the receipt of an application submitted under sub-section (8), grant or refuse the permission applied for thereunder, such permission shall be deemed to have been granted.

(11) If the Chairman refuses permission to any person to erect, re-erect or add to any wall or building as aforesaid which falls—

(i) within the street alignment, or

(ii) between the street alignment and the building line

of a projected public street ¹[or within a projected public park], the owner of the land on which it was sought to erect, re-erect or add to such wall or building, may call upon the Board, at any time, within three months from the date of such refusal—either—

(a) to pay him compensation for any damage sustained by him in consequence of such refusal, or

(b) to acquire so much of his land as falls within the street alignment, or between the street alignment and the building line ²[or within the area comprised in the projected public park], as the case may be ;

and the Board shall thereupon—

in case (a), make full compensation to the said owner for any damage which he may be found to have sustained in consequence of such refusal, and

in case (b), forthwith take steps to acquire the said land :

Provided that, in the case of such land as falls within the street alignment only, it shall be optional with the Board to acquire the same in lieu of paying compensation therefor.

(12) An appeal shall lie to the Board from any refusal by the Chairman to grant an application under this section.

¹Inserted by sec. 87 (g) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Inserted by sec. 87 (g) (ii), *ibid.*

of 1911.]

(Chapter III.—Improvement Schemes.—Section 64.)

Reference
of disputes
to Tribu-
nal.

64. (1) If any question or dispute arises—

- (a) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or
- (b) between the Board and any person who was entitled, otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55,
 - (i) as to whether the alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or
 - (ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or
 - (iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or
- (c) between the Board and any person, as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62 or section, 63,

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within a period of three months from—

in case (a) or case (b)—the date on which the street or square or part thereof was altered or closed by the Board, or

in case (c)—the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him,

and the determination of the Tribunal shall be final.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Board shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894; as modified by section 71 of this Act, were applicable to the case.

I of 1894.

(Chapter III.—Improvement Schemes.—Section 65.)

Vesting in Corporation of streets laid out or altered, and open pro-

the Board under an improvement scheme.

65. ¹(1) When the Board are of opinion—

- (a) that any street laid out or altered by them has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plan sanctioned by the State Government under section 48,
- (b) that such lamps, lamps-posts or other apparatus as are necessary for the lighting of such street have been provided, and
- (c) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

they shall report this fact to the Corporation ; and it shall be the duty of the Corporation within three months from the date of receipt of such report, after such inquiry as it thinks fit to make either to declare the street to be a public street by written notice affixed in some conspicuous position in such street, whereupon such street shall vest in the Corporation and be maintained, kept in repair, lighted and cleared by the Corporation ; or, if the Corporation is of opinion that certain works required to be done before such declaration may be made, to require the Board to complete such works :

Provided as follows :—

- (a) no engineering or accommodation work not included in the scheme as sanctioned by the State Government under section 48 shall be required to be done by the Board except with the latter's consent as a condition of such transfer ;
- (b) when certain works in connection with the street can be taken up only after a lapse of time to allow for consolidation of roads or the erection of buildings on both sides, the declaration shall not be put off till they are completed, but shall not be made, within the time prescribed under this sub-section on the Board giving an undertaking that they shall complete the works when asked by the Corporation to do so.

- ¹(2) As soon as the works required to be done by the Corporation as aforesaid are completed, the Board shall report the fact to the Corporation ; and it shall be the duty of the Corporation to declare the street to be a public street by written notice affixed in some conspicuous position in such street within two months from the date of receipt of the report, on the expiry

¹Substituted for the former sub-section (1) by sec. 38(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter III.—Improvement Schemes.—Chapter IV.—Acquisition and Disposal of land.—Sections 66—68.)

of which period the liability of the Board to maintain the street and the street lighting or to pay the Corporation rates assessed on the lands comprised within such street shall cease.

¹[(3)] When any open space for purposes of ventilation or recreation has been provided by the Board in executing any improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in, and be maintained at the expense of the Corporation :

Provided that the ²[Corporation of Calcutta] may require the Board before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

¹[(4)] If any difference of opinion arises between the Board and the ²[Corporation of Calcutta] in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the ³[State Government] whose decision shall be final.

66. If section 65 be extended, by notification, under section 1, sub-section (3), to any Municipality in the neighbourhood of the Calcutta Municipality, it shall be construed as if the references therein to the General Committee and the Corporation were references to the Commissioners of the former Municipality,

Application of section 65 to other Municipalities.

67. Notwithstanding anything contained in section 65 or section 66, the Board may retain any service passage which they have laid out for sanitary purposes, and may enter into an agreement with the Corporation or any other person for the supervision, repair, lighting and general management of any passage so retained.

Power of Board to retain service passages.

CHAPTER IV.

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land * * * or any interest in such land ⁵[for carrying out any of the purposes of this Act.]

Power to purchase or lease by agreement.

¹Former sub-sections (2) and (3) were re-numbered as sub-sections (3) and (4), respectively, by sec. 88(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²See foot-note 1 on page 314, *ante*.

³See foot-note 3 on page 283, *ante*.

⁴The words "which the Board are authorized to acquire" were omitted by sec. 89 (1)(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵Inserted by sec. 89 (1)(b), *ibid*.

[Ben. Act V

(Chapter IV.—Acquisition and Disposal of land.—
Sections 69—71.)

¹*Explanation.*—The power of the Board to acquire land or any interest in such land by purchase or lease may be exercised not only in respect of lands falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future and shall be exercised after obtaining the previous sanction of the State Government.

Compulsory Acquisition.

Power to acquire land under the Land Acquisition Act, 1894.

69. The Board may, with the previous sanction of the ²[State Government], acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

I of 1891

³*Explanation.*—The power of the Board to acquire land under the Land Acquisition Act, 1894, may be exercised not only in respect of lands falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future.

Tribunal to be constituted.

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

71. For the purpose of acquiring land under the said Act for the Board,—

- (a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;
- (b) the said Act shall be subject to the further modifications indicated in the schedule ;
- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and “[shall, subject to the provisions of section 77A, be final].”

Act V of 1908.

¹“*Explanation*” added by sec. 39(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²See foot-note 3 on page 288, *ante*.

³“*Explanation*” added by sec. 40 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

“Substituted for the words “shall be final” by sec. 41, *ibid*.

of 1911.]

*Chapter IV.—Acquisition and Disposal of land.—
Sections 72, 73.)*

72. (1) The said Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

¹(a) a person who was or has been a member of the Judicial Service as defined in article 236 of the Constitution of India for at least ten years and held a rank not inferior to that of a Subordinate Judge for at least three years ; or,

²(b) a barrister or advocate who has practised as such in the Calcutta High Court for not less than ten years.

(3) The President of the Tribunal and one of the assessors shall be appointed by the ³[State Government], and the other assessor shall be appointed by the Corporation ⁴[within the time fixed by the State Government], or, in default of the Corporation, by the ³[State Government] :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for reappointment at the end of that term :

⁵Provided that a member who is an assessor shall not be eligible for reappointment for more than a further term of two years.

(5) The ³[State Government] may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the ³[State Government] or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the ³[State Government] shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the ³[State Government] may prescribe.

Constitu-
tion of
Tribunal.

Remunera-
tion of
members
of
Tribunal.

¹Substituted for the former clause (a) by sec. 42 (1)(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the former clause (b) by sec. 42 (1)(b), *ibid*.

³See foot-note 3 on page 288, *ante*.

⁴Inserted by sec. 42(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵This proviso was added by sec. 42(3), *ibid*.

(Chapter IV.—Acquisition and Disposal of land.—Section 74.)

Officers and
servants of
Tribunal.

74. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

- (a) the number and grades of the clerks and other officers and servants ¹[who] he considers should be maintained for carrying on the business of the Tribunal,
- (b) the amount of the salary to be paid to each such officer and servant, and
- (c) the contributions payable under section 146 in respect of each such officer and servant.

(2) The President of the Tribunal shall, from time to time, make rules—

- ²(ai) prescribing the qualifications, the period of service, the age of superannuation and other conditions of service of the officers and servants of the Tribunal ;
- (i) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers or servants of the Tribunal ; and
- (ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any ³[servant of the Government] in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions, as may be prescribed by such rules, and, with the sanction of the Board for supplementing such contributions out of the funds of the Board :

⁴Provided that a servant of the ⁵[Government] employed as an officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed by the conditions of his service under the ⁶[Government] relating to transfer to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the ⁷[State Government].

¹Substituted for the word "whom" by sec. 43(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Clause (ai) was inserted by sec. 43(b), *ibid*.

³The words "Servant of the Crown" were originally substituted for the words "servant of the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1987, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1960.

⁴This proviso was substituted for the original proviso, by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1987.

⁵See foot-note 3 on page 328, *ante*.

⁶See foot-note 3 on page 328, *ante*.

of 1911.]

*(Chapter IV.—Acquisition and Disposal of land.—
Sections 75—77A.)*

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rules made under sub-section (2), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

75. The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

Payments
by Board
on account
of
Tribunal.

Act V of
1908.

76. (1) The President of the Tribunal may, from time to time, with the previous sanction of the ¹[State Government], make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

Power to
make rules
for
Tribunal.

(2) All such rules shall be published by notification.

I of 1894.

77. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

Award of
Tribunal
how to be
determined.

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

*77A. (1) An appeal shall lie to the High Court from an award under this Chapter, in any of the following cases, namely :—

Appeal.

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 ;

¹See foot-note 3 on page 388, *ante*.

*Section 77A was inserted by sec. 44 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

[Ben. Act V

(Chapter IV.—Acquisition and Disposal of land.—Section 78.)

(b) where the decision is that of the Tribunal, and—

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the High Court grants special leave to appeal :

Provided that the High Court shall not grant such special leave unless the President of the Tribunal has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (b) of sub-section (1) shall only lie on (one or more of) the following grounds, namely :—

(i) the decision being contrary to law or to some usage having the force of law ;

(ii) the decision having failed to determine some material issue of law or usage having the force of law ;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

(3) Subject to the provisions of sub-sections (1) and (2), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be, apply to appeals under this section.

(4) An appeal under this section shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of article 156 of the First Schedule to the Indian Limitation Act, 1908.

(5) The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the High Court on appeal under this Act as if it were a decree made by himself.

Abandonment of Acquisition.

78. (1) In any case in which the ¹[State Government] has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

Abandonment of acquisition in consideration of special payment.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

Act V of 1908.

IX of 1908.

I of 1894.

¹ See foot-note 3 on page 286, ante.

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—Section 78.)

(3) If the Board ¹* * * admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, ²[and if the Board decide to allow the application they shall proceed] to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land, under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

I of 1894.

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest ³[at such rate not exceeding six per cent. *per annum* as the ⁴[State Government] may fix by notification,] and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

¹The words "decide to" were omitted by sec. 45 (a) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "and the Board shall proceed" by sec. 45(a)(ii) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³These words were substituted for the words "at the rate of six per cent. *per annum*" by sec. 2(a) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

⁴See foot-note 3 on page 288, *ante*.

[Ben. Act V

(Chapter IV.—Acquisition and Disposal of land.—
Section 78.)

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, ¹[at the rate fixed under the provisions of that clause] up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

²(10) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date.

Ben. Act
IX of
1923.

³(11) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8), the rate of interest payable under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, six *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) on or after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, but before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934, and the agreement in respect of the payment of the same is executed during the period commencing with the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and ending two months after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934.

Ben. Act
II of 1935.

⁴(12) When an application has been made under sub-section (1) and the Board are of opinion that the whole or any part of the land belonging to the applicant is not required for the execution of the scheme but that it is necessary that some adjoining land should be purchased by the applicant and amalgamated with his land or the portion not so required, in order to conform to the

¹These words were substituted for the words "at the rate of six *per cent. per annum*" by sec. 2(b) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

²Sub-section (10) was inserted by sec. 3(2) of the Calcutta Improvement (Amendment) Act, 1923 (Ben. Act IX of 1923).

³Sub-section (11) was added by sec. 2(c) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

⁴Sub-section (12) was added by sec. 45(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—
Sections 78A, 78B.)

general layout of the scheme, they may permit the applicant to execute an agreement to purchase the adjacent land abovementioned and may at the same time fix a fee in consideration of which the land not required for the execution of the scheme may be exempted from acquisition. The price of the land sold together with the sum fixed as exemption fee shall then be dealt with in the manner provided in sub-section (4), and if the whole sum payable or any part of it is kept outstanding, it shall be secured as a charge on the interest of the applicant in the total area of the land sold to the applicant and of the land exempted. Sub-sections (5), (7) and (8) shall apply to such agreements in the same manner as in the case of total abandonment under the foregoing provisions of this section.

¹*Betterment fee.*

¹78A. (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board, in framing the scheme, may, in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

Payment
of better-
ment fee.

(2) Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

¹78B. (1) When it appears to the Board that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Board shall by a resolution passed in this behalf declare that for the purpose of determining such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (i) of sub-section (1) of section 45 that the Board propose to assess the amount of the betterment fee payable in respect of such land under section 78A.

Assessment
of better-
ment fee
by Board.

(2) The Board shall then assess the amount of betterment fee payable by each person concerned after giving such person an opportunity to be heard and such person shall within three months from the date of receipt of notice in writing of such

¹This sub-heading and sections 78A, 78B, 78C, 78D, 79E, 79F and 79G were inserted by sec. 7 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

[Ben. Act V

(Chapter IV.—Acquisition and Disposal of Land.—Section 78C.)

assessment from the Board, inform the Board by a declaration in writing whether he accepts or dissents from the assessment.

(3) When the assessment proposed by the Board is accepted by the person concerned within the period specified in sub-section (2), such assessment shall be final.

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 78C.

Settlement
of better-
ment fee
by arbi-
trators.

¹78C. (1) For the determination of the matter referred to in sub-section (4) of section 78B, the ²[State Government] shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator.

(3) For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel, and the other shall be appointed by the ³[State Government] from the other part of the panel :

Provided that for the purposes of a particular scheme the ⁴[State Government] may, prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel.

(4) In the event of a difference of opinion on any matter between the two arbitrators, a third arbitrator ⁵[who shall act as an umpire] shall be selected by lot from the first part of the panel, and ⁶[the decision of the umpire on the matter shall be final].

(5) If an arbitrator dies, resigns, becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the ⁷[State Government] neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator.

¹ See foot-note 1 on page 381, *ante*.

² See foot-note 3 on page 288, *ante*.

³ Inserted by sec. 46(a) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴ Substituted for the words "the matter shall be decided by the votes of the majority of the three arbitrators" by sec. 46 (a)(ii), *ibid*.

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—
Sections 78D—78G.)

(6) If the ¹[State Government] is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself, it may remove him.

(7) When ²[an award has been made under and this section by the arbitrators or the umpire, as the case may be,] they shall sign it and forward it to the Board, and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons.

(8) If the ¹[State Government] is satisfied after such inquiry as it thinks fit that an award has been improperly procured or that an arbitrator has misconducted himself in connection with an award, the ¹[State Government] may set aside the award.

³78D. The Board shall pay to each arbitrator a fee to be determined by the ¹[State Government] in respect of the whole of the scheme for which his services are utilized.

Fees for arbitrators.

³78E. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 78C, shall be governed by rules to be made in this behalf under section 137 :

Proceedings of arbitrators.

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorized agent.

³78F. When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 78B or section 78C, as the case may be, the Board shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest, at the rate of six *per cent. per annum* upon any amount outstanding shall be payable from that date.

Board to give notice to persons liable to payment of betterment fee.

³78G. (1) Any person liable to the payment of a betterment fee may, at his option, instead of making a payment thereof to the Board, execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of six *per cent. per annum*, the first annual payment of such interest to be made one year from the date referred to in section 78F.

Agreement to make payment of betterment fee a charge on land.

(2) Every payment due from any person in respect of a betterment fee and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of any mortgage or other charge whether legal or equitable created either before or after the com-

¹See foot-note 3 on page 288, *ante*.

²substituted for the words "the arbitrators have made their award under section 78C" by sec. 46 (b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³See foot-note 1 on page 331, *ante*.

[Ben. Act V

(Chapter IV.—Acquisition and Disposal of Land.—
Sections 79, 79A.)

mencement of the Calcutta Improvement (Amendment) Act, 1931, be the first charge upon the interest of such person in such land.

Ben. Act
VIII of
1931.

(3) The provisions of sub-sections (7), (8) and (9) of section 78 relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying off of the charge with interest, and the restrictions in respect of suits against the Board shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable in respect thereof.

¹Recovery of special payments and betterment fees.

Recovery
of money
payable in
pursuance
of sections
78, 78B,
78C or
78G.

79. ¹All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 78, or by any person in respect of a betterment fee under section 78B or section 78C, or by any person under an agreement executed in pursuance of section 78G, sub-section (1), shall be recoverable by the Board (together with interest, ²[due, up to the date of realization, which shall, in the case of betterment fees under section 78B or section 78C, be] at the rate of six per cent. per annum), from the said person or his successor in interest in such land, in the manner provided by ³[the Calcutta Municipal Act, 1951], for the recovery of the consolidated rate ;

West Ben.
Act XXXIII
of 1951.

and, if not so recovered, the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Board to
appoint
persons for
enforce-
ment of
processes
for
recovery
of dues.

⁴79A. The Board may direct by what authority any powers or duties incident under ⁵[the Calcutta Municipal Act, 1951], to the enforcement of any process for the recovery of the consolidated rate shall be exercised and performed when that process is employed under section 79.

¹This sub-heading and this paragraph were substituted for the original first paragraph by sec. 8 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

²These words, figures and letters were substituted for the words "up to the date of realization" by sec. 2 of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

³Substituted for the words "the Calcutta Municipal Act, 1923," by sec. 47 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴Section 79A was inserted by sec. 9 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁵Substituted for the words "the Calcutta Municipal Act, 1923" by sec. 48 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—Chapter V.—Taxation.—Sections 80—82.)

¹Acquisition on fresh declaration.

¹80. If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 78, or in respect of which the payment of a betterment fee has been accepted in pursuance of sub-section (3) of section 78B, or has been made after its determination under section 78C, or in respect of which an agreement for such payment has been executed under section 78G, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Agreement or payment not to bar acquisition under a fresh declaration.

I of 1894.

Disposal of Land.

81. (1) The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act.

Power to dispose of land.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(a) shall give notice by advertisement in local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without ²[prejudice to public interest or] detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under clause (b) to take on lease or to purchase any land, the right shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

CHAPTER V.

TAXATION.

Duty on Transfers of Property.

³82. (1) The duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and usufructuary mortgage, respectively, of immovable property shall, in the case of instruments affecting immovable property situated in the Calcutta Municipality and executed on or after the commencement of this Act⁴ be increased by two *per centum* on the value of the

Duty on certain transfers of immovable property.

II of 1899.

¹This sub-heading and section 80 were substituted for the original section 80 by sec. 10 of the Calcutta Improvement (Amendment) Act, 1981 (Ben. Act VIII of 1981).

²Inserted by sec. 49 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³Section 82 was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), sec. 8, Sch. I.

⁴i.e. the 2nd January, 1913 see notification No. 1148, dated the 30th October, 1911.

(Chapter V.—Taxation.—Section 83.)

property so situated, or (in the case of an usufructuary mortgage) on the amount secured by the instrument, as set forth in the instrument.

(2) For the purposes of this section, section 27 of the said Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of— II of 1899.

(a) property situated in the Calcutta Municipality, and

(b) property situated outside the Calcutta Municipality, respectively.

(3) For the purposes of this section, section 64 of the said Indian Stamp Act, 1899, shall be read as if it referred to the Board as well as the Government.

(4) All collections resulting from the said increase shall, after deducting incidental expenses (if any), be paid to the Board at such time as may be prescribed by rule made under section 86.

Terminal Tax on Passengers.

Terminal
tax on
passengers
by railway
or inland
steam-
vessel.

83. (1) Every passenger brought to or taken from any station in the Calcutta Municipality or the Howrah Municipality by railway, and

every passenger brought to or taken from any landing place in the port of Calcutta, within ¹[eight kilometres] from Government House, by inland steam-vessel,

shall pay a tax of ²[three naye paise] in respect of each journey so made by him :

Provided as follows :—

(a) the said tax shall not be payable by any passenger brought from, or taken to, any place situated within a radius of ³[forty-eight kilometres] from Government House ;

(b) the ⁴[State Government] may, by notification, either—

(i) ⁵* * reduce the said radius to any distance less than ⁶[forty-eight kilometres], in its application either to passengers generally or to passengers of any specified class, or

(ii) ⁷* * cancel proviso (a), or

¹Substituted for the words "five miles" by sec. 2 (a) of the Calcutta Improvement (Amendment) Act, 1961 (West Ben. Act XX of 1961).

²Substituted for the word "half an-anna" by sec. 2(b), *ibid.*

³Substituted for the words "thirty miles" by sec. 2(c) (i), *ibid.*

⁴See foot-note 8 on page 288, *ante*.

⁵The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

of 1911.]

(Chapter V.—Taxation.—Section 83.)

(iii) reduce the said tax to any lower rate, either in respect of passengers generally or in respect of passengers making frequent journeys ;

(c) the said tax may, in the case of passengers taking suburban season tickets, be calculated at the rate of ¹[thirty-seven naya paise] *per mensem* for each such ticket, or at such lower rate as the ²[State Government] may prescribe by notification.

(2) The said tax shall be collected by means of a surcharge on fares, by the administration of the railway, or the owner of the vessel, by which the passengers are carried, and shall be paid to the Board at such time as may be prescribed by rule made under section 86, after making such deduction as the ³[State Government] may approve to meet any expenses incurred in connection with the collection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver, or cause to be prepared and delivered, to the Chairman, each quarter, a return in the form prescribed by rule made under section 86, of all passengers, carried by such vessel, by whom the tax imposed by that sub-section is payable ; and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(4) Every such return shall be delivered to the Chairman or posted to his address within fifteen working days, or at most within thirty days, after the end of the quarter to which it relates.

Explanation.—The expression “working day” as used in this sub-section, means every day except a public holiday as defined in section 25 of the Negotiable Instruments Act, 1881.

(5) If this Act is directed to come into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

(6) The expression “administration” and the expressions “owner” and “inland steam-vessel” as used in this section, have the same meanings as in the Indian Railways Act, 1890, and the Indian Steam-vessels Act, ⁴[1917], respectively.

⁴(7) After the commencement of ⁵[the Constitution], a tax on passengers by railway shall only be leviable under this section if it ⁶[was lawfully levied] immediately before that date, and shall only be leviable until provision to the contrary is made by ⁷[Parliament].

¹Substituted for the words “six annas” by sec. 2(c) (ii) of the Calcutta Improvement (Amendment) Act, 1961 (West Ben. Act XX of 1961).

²See foot-note 8 on page 288, *ante*.

³These figures were substituted for the figures “1884” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴Sub-section (7) was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words and figures “Part III of the Government of India Act, 1935” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁶These words were substituted for the words “was levied”, *ibid*.

⁷This word was substituted for the words “the Central Legislature”, *ibid*.

XXVI of
1881.

IX of 1890.
I of 1917.

The Calcutta Improvement Act, 1911.

[Ben. Act V

(Chapter V.—Taxation.—Sections 84—86.)

Customs Duty on Jute.

Customs
duty on
exports of
jute from
Calcutta
by sea.

84. (1) A customs duty shall be levied and collected on all jute exported by sea from the Port of Calcutta to any other port, whether beyond or within India, at such rate, not exceeding,—

(a) in the case of raw jute (including jute cuttings and rejections), ¹[twelve naye paise per bale of one hundred and eighty kilograms], and

(b) in the case of manufactured jute, ²[seventy-five naye paise per metric tonne of one thousand kilograms],

as the ³[State Government] may prescribe by notification :

Provided that the said duty shall not be levied or collected in respect of jute, whether raw or manufactured, exported under any contract which was made before the fifteenth day of August, 1911, and the existence of which was established to the satisfaction of the Customs Collector before the fifteenth day of September, 1911.

(2) At the close of each quarter, or as soon thereafter as may be convenient, the duty collected under sub-section (1) shall, after deducting the expenses of collection (if any), be paid by the Customs Collector to the Board.

⁴(3) After the commencement of ⁵[the Constitution] a duty shall only be leviable under this section if it ⁶[was lawfully levied] immediately before that date, and shall only be leviable until provision to the contrary is made by ⁷[Parliament].

85. Section 5 of the Indian Tariff Act, ⁸[1934], shall not apply to jute (whether raw or manufactured) passing by land out of Calcutta.

XXXII
of 1934.

Supplemental Provisions.

⁹86. (1) The ³[State Government] may make rules for carrying out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, the ³[State Government] may make rules—

(a) for regulating the collection of taxes imposed by this chapter, and the payment thereof to the Board ;

¹Substituted for the words "two annas per bale of four hundred pounds" by sec. 3(a) of the Calcutta Improvement (Amendment) Act, 1961 (West Ben. Act XX of 1961).

²Substituted for the words "twelve annas per ton of two thousand two hundred and forty pounds" by sec. 3(b), *ibid.*

³See foot-note 3 on page 288, *ante*.

⁴Sub-section (3) was inserted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵See foot-note 5 on page 337, *ante*.

⁶See foot-note 6 on page 337, *ante*.

⁷See foot-note 7 on page 337, *ante*.

⁸These figures were substituted for the figures "1894" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

⁹Section 86, in so far as it affects section 82, was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), sec. 3, Sch. I.

Section 5
of the
Indian
Tariff Act,
1934, not
to apply
to jute.
Power to
State
Govern-
ment to
make rules.

of 1911.]

(Chapter V.—Taxation.—Chapter VI.—Finance.—Sections 87, 88.)

- (a) for prescribing the form of the return required by section 83, sub-section (3), and the particulars to be contained therein, and the manner in which the same is to be verified.

87. The offences mentioned in column 1 of the following table shall be punishable to the extent mentioned in column 2 thereof with reference to such offences, respectively :—

Punish-
ment for
offences.

1

(1) Omitting to make any return required by section 83, sub-section (3), or, refusing to sign or complete the same.	Fine not exceeding one thousand rupees.
(2) Making and delivering any such return containing any statement not true to the best of the information and belief of the person making the same.	The penalty provided in the Indian Penal Code, section 199 for making a false statement in a declaration.
(3) Otherwise contravening any rule made under section 86.	Fine not exceeding five hundred rupees.

Act XLV
of 1860.

CHAPTER VI.

FINANCE.

Municipal Contributions.

88. (1) The ¹[Commissioner of the Corporation] shall pay from the Municipal Funds to the Board on the first-day of each quarter, so long as the Board continue to exist, a sum equivalent to one-half *per cent.* per quarter on the annual rateable valuation determined under ²[Chapter XI of the Calcutta Municipal Act, 1951,] as it stood on the first day of the last preceding quarter :

Contribu-
tions from
Municipal
Funds.

Provided as follows :—

- ✓ (a) in the case of property vested in the Commissioners for the Port of Calcutta, the said percentage shall be calculated upon nine-tenths of the annual rateable valuation of such property, and
- (b) if this Act is directed to come into force during a quarter, the amount of the first of such payments shall bear such proportion to the sum payable hereunder as the unexpired portion of that quarter bears to the whole quarter.

West Ben.
Act
XXXIII
of 1951.

¹The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938), and thereafter the word "Chairman" was substituted for the words "Executive Officer" by sec. 50(1) (a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "Chapter X of the Calcutta Municipal Act, 1923" by sec. 50(1), (b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

[Ben. Act V

(Chapter VI.—Finance.—Sections 89—91.)

(2) If in any financial year the sums due to the Board under section 82 and sub-section (1) of this section aggregate less than seven-and-a-half lakhs of rupees, the ¹[Commissioner of the Corporation] shall pay to the Board, from the Municipal Funds, such further sum as may be required to make up the said sum of seven-and-a-half lakhs of rupees.

(3) The payment prescribed by sub-sections (1) and (2) shall be made in priority to all other payments due from the Corporation, except those referred to in ²[section 144 of the Calcutta Municipal Act, 1951].

West Ben.
Act XXXIII
of 1951.

(4) If any payment prescribed by sub-section (1) or sub-section (2) cannot be made without increasing the maximum authorised by ³[section 165 of the Calcutta Municipal Act, 1951], then that maximum may be increased to such extent as may be necessary to secure the due making of such payment.

Loans.

Power of
Board to
borrow
money.

89. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the ⁴[State Government] may approve, any sum necessary for the purpose of—

(a) meeting expenditure debitable to the capital account under section 123, or

(b) repaying any loan previously taken under this Act :

* * * * *

90. [Manner and time of borrowing money.]—Rep. by the Devolution Act, 1920 (XXXVIII of 1920.)

Loans from
Banks.

91. Whenever the borrowing of any sum has been approved under section 89, the Board may, instead of borrowing such sum or any part thereof from the public, * * * take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part ;

and, with the previous sanction of the ⁴[State Government] may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or

¹The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 50 (g) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "section 110 of the Calcutta Municipal Act, 1923" by sec. 50 (j) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³Substituted for the words "section 124 of the Calcutta Municipal Act, 1923" by sec. 50 (k), *ibid.*

⁴See foot-note 8 on page 288, *ante*.

⁵The proviso was omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words and figures "but subject to any direction given by the Provincial Government under section 90" were repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1911.]

(Chapter VI.—Finance.—Sections 92—97.)

of the sums from time to time advanced on such cash account with interest.

92. When any sum of money has been borrowed under section 89 or section 91 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the ¹[State Government].

Diversion of borrowed money to purposes other than those first approved.

93. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the ¹[State Government], may from time to time determine.

Form, signature, exchange, transfer and effect of debentures.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debentures being prior in date to others.

94. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman ; and such signature may be engraved, lithographed or impressed by any mechanical process.

Signature of coupons attached to debentures.

95. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding anything in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons :

Payments to survivors of joint payees.

Provided that nothing in the section shall affect any claim by the representative of a deceased person against such survivor or survivors.

96. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

Receipt by joint holder for interest or dividend.

97. All payments due from the Board for interest on, or the repayment of, loans, shall be made in priority to all other payments due from the Board.

Priority of payments for interest and repayment of

IX of
1872.

¹ See foot-note 8 on page 288, ante.

(Chapter VI.—Finance.—Section 105.)

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the ¹[State Government] specially sanction a gradual readjustment :

²Provided that if the current value of the securities in all the sinking funds together is equal to the amount mentioned in sub-section (1), the deficit in any particular sinking fund shall not be certified by the Accountant-General.

Enforcement of Liabilities.

105. (1) If the Board fail—

(a) to pay any interest due in respect of any loan taken in pursuance of section 89, or

(b) to make any payment prescribed by section 98, section 99 or sub-section (2) of section 104, or

(c) to make any investment prescribed by section 101,

the Accountant General of ³[West Bengal] shall make such payment or set aside and invest such sum as ought to have been invested under the said section 101, as the case may be ;

and the ⁴[Commissioner of the Corporation] shall forthwith pay from the Municipal Funds to the said Accountant-General a sum equivalent to the sum so paid or invested by him ;

and the ⁵[State Government] may attach the rents and other income of the Board ; and thereupon the provisions of ⁶[sub-section (2) of section 152 of the Calcutta Municipal Act, 1951], shall, with all necessary modifications, be deemed to apply.

(2) Whenever the ⁴[Commissioner of the Corporation] has made any payment to the Accountant-General under sub-section (1), the ⁵[State Government] shall reimburse the Corporation out of the rents and income attached under that sub-section, and if such rents and income prove insufficient for that

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of 1951.

¹The words "Provincial Government" were originally substituted for the words "Government of India" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²This proviso was added by sec. 51 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³See foot-note 2 on page 343, *ante*.

⁴The words "Executive Officer of the Corporation" in sub sections (1) and (2) were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938), and thereafter the word "Chairman" in the said sub-sections was substituted for the words "Executive Officer" by sec. 52(1)(a) and (2)(a), respectively, of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵see foot-note 3 on page 298, *ante*.

⁶The words, brackets and figures "sub-section (2) of section 118 of the Calcutta Municipal Act, 1923" in sections 105(1) and 106 were originally substituted for the words, brackets and figures "sub-section (2) of section 141 of the Calcutta Municipal Act, 1899" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938), and thereafter the words "section 152 of the Calcutta Municipal Act, 1951" were substituted for the words "section 118 of the Calcutta Municipal Act, 1923" by secs. 52(1), (b) and 58, (2), respectively, of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

Procedure
if Board
fail to
make any
payment
or invest-
ment in
respect of
loans.

of 1911.]

(Chapter VI.—Finance.—Sections 106—108.)

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purpose the Corporation may, with the previous sanction of the ¹[State Government] increase the maximum authorized by ²[section 165 of the Calcutta Municipal Act, 1951], to such extent as may be necessary for the purpose of making up the deficiency :

Provided that no such increase shall be made, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

106. If the ³[Commissioner of the Corporation] fails to make any payment as required by section 88 or section 105, the ¹[State Government] may attach the Municipal Funds or any of them ;

and thereupon the provisions of ⁴[sub-section (2) of section 152 of the Calcutta Municipal Act, 1951], shall, with all necessary modifications, be deemed to apply, and the ¹[State Government] may further require the Corporation to increase the maximum authorized by ⁵[section 165 of that Act], to such extent as may be necessary for the purpose of making such payment :

Provided that no such increase shall be made, in consequence of any failure of the ³[Commissioner of the Corporation] to make any payment as required by section 105, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

107. All moneys paid by the ³[Commissioner of the Corporation] under sub-section (1) of section 105 and not reimbursed by the ¹[State Government] under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 105 and levied under section 106, shall constitute a charge upon the property of the Board.

Budget Estimates.

108. (1) The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

¹See foot-note 3 on page 288, *ante*.

²Substituted for the words "section 124 of the Calcutta Municipal Act, 1923" by sec. 52 (2)(b) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

³The words "Executive Officer of the Corporation" in the two places in section 106 and in sections 107 and 111 were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by secs. 53(1), 54 and 55 ; respectively, of the Calcutta Improvement (Amendment) Act 1955 (West Bengal Act XXXII of 1955).

⁴See foot-note 6 on page 344, *ante*.

⁵The word and figures "section 124" were originally substituted for the words, brackets, letter and figures, "clause (a) of section 147", by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). Thereafter the words "section 165 of that Act" were substituted for the words and figures "section 124 of that Act" by sec. 53(3) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

Procedure
if Chair-
man of
Corpora-
tion fails to
make any
payment
due to
Board or
Accountant
General.

Payments
under sec-
tion 105
to be a
charge on
the prop-
erty of
the

Estimates
of income
and expend-
iture to
be laid

before
Board.

[Ben. Act V

(Chapter VI.—Finance.—Sections 109-113.)

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the ¹[State Government] or the Board may from time to time direct.

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee, at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

Sanction
of Board to
estimates.

109. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

Approval
of State
Govern-
ment to
estimates.

110. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the ¹[State Government] who may, at any time within two months after receipt of the same,—

(a) approve the estimate, or

(b) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board, they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the ¹[State Government], who may then approve it.

Transmis-
sion of
copy of
estimate
to Commis-
sioner of
Corpora-
tion.

111. A copy of every such estimate shall, when approved by the ¹[State Government], be sent by the Board to the ²[Commissioner of the Corporation].

Special
provisions
as to the
first esti-
mate after
the consti-
tution of
the Board.

112. (1) A special meeting of the Board be held as soon as may be expedient after the day appointed under section 17, sub-section (1), and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

(2) The provisions of section 108, sub-sections (2) to (4), and sections 109 to 111 shall apply to the said estimate.

Supple-
mentary
estimates.

113. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

(2) The provisions of section 108, sub-sections (3) and (4), and sections 109 to 111 shall apply to every supplementary estimate.

¹ See foot-note 3 on page 288, ante.

² See foot-note 3 on page 345, ante.

of 1911.]

(Chapter VI.—Finance.—Sections 114—116.)

114. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

Adherence to estimate, and maintenance of closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the ¹[State Government].

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely,—

- (a) re-payments of moneys belonging to contractors, or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake ;
- (b) payments due under a decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award of the Tribunal ;
- (c) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 154 ;
- (d) sums payable under this Act by way of compensation ; and
- (e) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (e) of sub-section (3), the Chairman shall forthwith report the circumstances to the ¹[State Government], and shall at the same time explain how the Board propose to cover the expenditure.

Banking and Investments.

115. All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the ²[Imperial Bank of India] ³[or any other bank approved by the Board with the sanction of the State Government] to the credit of an account which shall be styled "The Account of the Trustees for the Improvement of Calcutta."

Receipt of moneys, and deposit in Imperial Bank of India.

116. (1) Surplus moneys at the credit of the said account may from time to time be—

Investment of surplus money.

(a) deposited at interest in the ²[Imperial Bank of India] or in any other Bank ⁴* * * approved by the ¹[State Government] in this behalf, or

(b) invested in any of the securities or debentures mentioned in section 101, sub-section (1), of this Act or in section 20 of the Indian Trusts Act, 1882.

II of 1882.

¹See foot-note 3 on page 288, *ante*.

²These words were substituted for the words "Bank of Bengal" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

³Inserted by sec. 56 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴The words "in Calcutta" were omitted by sec. 57, *ibid*.

(Chapter IV.—Finance.—Sections 117—120.)

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board ; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

Payment
by cheque.

117. (1) No payment shall be made by the ¹[Imperial Bank of India] ²[or other bank referred to in section 115] out of the account referred to in section 115, except upon a cheque.

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

Signature
of orders
under
section 116
and
cheques.

118. All orders for making any deposit, investment, withdrawal or disposal under section 116, and all cheques referred to in section 117, must be signed—

(a) by the Chairman and the Secretary to the Board, or

(b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman.

Duty of
Chairman
and others
before
cheque.

119. Before the Chairman or any other Trustee or the Secretary to the Board signs a cheque under section 118, he must satisfy himself that the sum for which such cheque is drawn either is required for a purpose or work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in section 114, sub-section (3).

Accounts.

Definition
of "cost of
manage-
ment",

120. (1) The expression "cost of management," as used in the following sections in this Chapter, means—

(a) the salary and house-rent and conveyance allowance (if any) of the Chairman or acting Chairman, and the allowances and contributions referred to in section 11, sub-section (2) ;

(b) all fees paid under section 22, for attendance at meetings;

(c) the salaries, fees and allowances of, and the contributions paid under section 146 in respect of, officers and servants of the Board who are included in statements prepared under section 30 ;

(d) the remuneration of other employees of the Board, except employees who are paid by the day or whose pay is charged to temporary work ;

(e) all payments made under section 75 and section 146 on account of the Tribunal ; and

(f) all office expenses incurred by the Board or the Tribunal.

¹These words were substituted for the words "Bank of Bengal" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²Inserted by sec. 58 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter VI.—Finance.—Sections 121—123.)

(2) The expression "office expenses", in clause (f), means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture therefor, ¹[the purchase of books and charges for printing, photographing, preparing models and stationery].

Keeping capital account and revenue account.

121. (1) The Board shall keep a capital account and a revenue account.

Credits to capital account.

(2) The capital account shall show separately all expenditure incurred by the Board on each improvement scheme ** *

122. There shall be credited to the capital account—

²(a) all sums (except interest) received by way of special payments for betterment fees in pursuance of sections 78, 78A or 79 ;

(b) all moneys received on account of loans taken by the Board in pursuance of section 89 or section 91 ;

(c) the proceeds of the sale of any land vested in the Board

(d) **

(e) the proceeds of the sale of any movable property (including securities for money invested from the capital account) belonging to the Board ;

(f) all lump sums received from ³[any Government] in aid of the capital account ;

(g) all *premia* received by the Board in connection with leases ** *

(h) all sums (if any) which the ⁴[State Government] directs, under section 125, sub-section (2), to be credited to the capital account ; and

(i) all moneys resulting from the sale of securities by direction of the ⁵[State Government] under section 126.

123. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to—

Application of capital account.

(a) meeting all costs of framing and executing improvement schemes ** *

(b) meeting the cost of acquiring land for carrying out any of the purposes of this Act ;

¹Substituted for the words "and charges for printing and stationery" by sec. 59 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²The words "and each re-housing scheme" were omitted by sec. 60, *ibid.*

³Clause (i) was substituted for the original clause by sec. 11 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴The words "which was purchased out of any loan taken in pursuance of section 89 or section 91" were omitted by sec. 61 (1) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁵Clause (d) was omitted by sec. 61 (2), *ibid.*

⁶These words were substituted for the words "the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷The words "for any term exceeding forty years" were omitted by sec. 61(3) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁸See foot-note 3 on page 288, *ante.*

⁹The words "and re-housing schemes" were omitted by sec. 62 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

(Chapter VI.—Finance.—Sections 124, 125.)

- (c) meeting the cost of constructing buildings required for carrying out any of the purposes of this Act ;
- (d) the repayment of loans from money borrowed in pursuance of section 89, clause (b) ;
- (e) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working ;
- (f) making, or contributing towards the cost of making, surveys, in pursuance of section 167 ;
- (g) meeting such proportion of the cost of management as the Board may, with the sanction of the ¹[State Government], prescribe in this behalf ; and
- (h) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

Credits to
revenue
account.

124. There shall be credited to the revenue account—

- (a) all interest received in pursuance of ²[sections 78, 78G or 79] ;
- (b) all proceeds received by the Board of taxes imposed by Chapter V ;
- (c) all sums contributed from Municipal Funds which are received by the Board under section 88 ;
- (d) all ³* damages ⁴* * received by the Board under section ⁵[162] ;
- (e) all annually recurring sums received from the Government in aid of the funds of the Board ;
- ⁶(f) all receipts from lease of playgrounds, swimming pools, athletic tracks and stadiums and from sale of tickets for admission thereto ;
- (g) all rents of land vested in the Board ; and
- (h) all other receipts by the Board which are not required by section 122 to be credited to the capital account.

Applica-
tion of
revenue
account.

125. (1) The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to—

- (a) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of section 89, clause (a), or section 91, and all other charges incurred in connection with such loans ;

¹See foot-note 8 on page 268, *ante*.

²These words, letter and figures were substituted for the words and figures "section 78 or section 79" by sec. 12 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

³The word "fines" was omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and proceeds of confiscations" were omitted, *ibid*.

⁵These figures were substituted for the figures "175", *ibid*.

⁶Substituted for the former clause by sec. 68 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(Chapter VI.—Finance.—Sections 126, 127.)

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- (b) paying all sums due from the Board in respect of rates and taxes imposed under ¹[the Calcutta Municipal Act, 1951], upon land vested in the Board
 - (c) paying the cost (if any) of maintaining a separate establishment for the collection of the rents and other proceeds of land vested in the Board ;
 - ²(ci) paying of cost of holding or participating in conferences or exhibitions relating to urban improvements ;
 - ³(cc) paying the fees prescribed for arbitrators under section 78D ;
 - (d) paying all sums which the ⁴[State Government] may direct to be paid to any auditor under section 132 ;
 - (e) making payments in pursuance of section 149, for interest or for expenses of maintenance or working ;
 - (f) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (g) of section 123 ; and
 - (g) paying all other sums due from the Board, other than those which are required by section 123 to be disbursed from the capital account.
- (2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,
subject to the maintenance of a closing balance of one *lakh* of rupees, and
- ⁵[unless contributed permanently to the capital account under the direction of the State Government or advanced to the capital account under the provisions of section 127], and
 - unless the ⁴[State Government] otherwise directs,
 - be invested, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.
126. If, at any time after any surplus referred to in section 125, sub-section (2), has been invested, the ⁴[State Government] is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Power to direct sale of securities in which any surplus of the revenue account is invested.
Advances from revenue account to capital account.

127. (1) Notwithstanding anything contained in section 125, the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

(2) Every such advance ⁶[shall, unless a direction is given by the State Government under sub-section (2) of section 125, be refunded] to the revenue account as soon as may be practicable.

¹Substituted for the words "the Calcutta Municipal Act 1923" by sec. 64(1) (i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Clause (ci) was inserted by sec. 64(1) (ii), *ibid.*

³Clause (cc) was inserted by sec. 18 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴See foot-note 3 on page 288, *ante*.

⁵Substituted for the words "except as provided in section 127" by sec. 64(2) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁶Substituted for the words "shall be refunded" by sec. 65, *ibid.*

(Chapter VI.—Finance.—Sections 128—134.)

Advances
from
capital
account to
revenue
account.

128. (1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

Submi-
ssion of
abstracts
of accounts
to State
Govern-
ment.

129. The Board shall submit to the ¹[State Government], at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure.

Annual
audit of
accounts.

130. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the ¹[State Government] may appoint in this behalf.

Powers of
auditor.

131. The auditor so appointed may,—

- (a) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;
- (b) by written summons require any person having the custody or control of, or being accountable for, any such document to appear in person before him ; and
- (c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

Remune-
ration of
auditor.

132. The Board shall pay to the said auditor such remuneration as the ¹[State Government] may direct.

Reports
and infor-
mation
to be
furnished
by auditor
to the
Board.

133. The said auditor shall—

- (a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due to the Board, or in the accounts, and report the same to the ¹[State Government],
- (b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and
- (c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

Board to
detect
pointed
out by
auditor.

134. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

¹ See foot-note 3 on page, 288, ante.

of 1911.]

*(Chapter VI.—Finance.—Chapter VII.—Rules.—
Sections 135—138.)*

135. The Chairman shall cause the report mentioned in section 133, clause (c), to be printed and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Auditor's report to be sent to each Trustee and considered by Board.

136. As soon as practicable after the receipt of the said report, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the ¹[Commissioner of the Corporation] and to the ²[State Government].

Publication and transmission of an abstract of the accounts.

CHAPTER VII.

RULES.

137. In addition to the power conferred by section 86, the ²[State Government] may make rules—

Further powers to State Government for making rules.

(1) for regulating elections under ³[clauses (c) and (d) of sub-section (1) of section 4] ;

(2) for prescribing the maximum sum which may be paid to any person by way of fees under section 22 ;

(3) for fixing the charge to be made for a copy of, or extracts from, the municipal assessment-book furnished to the Chairman under section 49 ; and

⁴(3a) for determining the qualifications and disqualifications of, the conditions and mode of election, selection or appointment of, an arbitrator and for regulating the proceedings of arbitrators under section 78C ;

(4) for prescribing the form of the abstracts of accounts referred to in sections 129 and 136.

138. (1) In addition to the power conferred by section 31, the Board may from time to time make rules (not inconsistent with any rules made by the ²[State Government] or the President of the Tribunal under this Act) for carrying out the purposes of this Act.

Further powers to Board for making rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

(a) for associating members with the Board under section 19 ;

¹The words "Executive Officer of the Corporation" were originally substituted for the words "Chairman of the Corporation" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word "Commissioner" was substituted for the words "Executive Officer" by sec. 66 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²See foot-note 8 on page 288, *ante*.

³Substituted for the words "sub-sections (1), (2) and (3) of section 7" by sec. 67 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴Clause (3a) was inserted by sec. 14 of the Calcutta Improvement Amendment Act, 1931 (Ben. Act VIII of 1931).

[Ben. Act V

(Chapter VII.—Rules.—Sections 139—141.)

- (b) for appointing persons (other than Trustees and persons associated with the Board under section 19) to be members of Committees under section 20 ;
 - (c) for regulating the delegation of powers or duties of the Board to Committees under section 20 ;
 - (d) for the guidance of persons employed by them under this Act ;
 - (e) for prescribing the fees payable for copies of documents delivered under section 43, sub-section (3), ¹[or clause (iv) of sub-section (2) of section 63] ;
 - (f) for facilitating the taking of a census and securing accurate returns thereof ;
 - (g) for the maintenance and management of dwellings and shops constructed under re-housing schemes.
- (3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable—
- (i) with fine which may extend to five hundred rupees, or
 - (ii) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.

Conditions precedent to the making of rules under sections 86, 137 or 138.

139. The power to make rules under section 86, section 137 or section 138 is subject to the condition of the rules being made after previous publication, and to the following further conditions, namely,—

- (a) a draft of the rules shall be published by notification and in local newspapers ;
- (b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication, or such longer period as the ²[State Government] or (in the case of rules made under section 138) the Board may appoint ;
- (c) for one month at least during such period, a printed copy of such draft shall be kept at the Board's office for public inspection, and every person shall be permitted at any reasonable time to peruse the same, free of charge ;
- (d) printed copies of such draft shall be delivered to any person requiring the same, on payment of a fee of two annas for each copy.

Sanction of State Government required to rules made under section 138.

140. No rule made under section 138 shall have any validity unless and until it is sanctioned, with or without modification, by the ³[State Government].

Publication of rules.

141. When any rule has been made under section 86 or section 137, and when any rule has been made under section 138

¹These words, brackets and figures were added by sec. 4 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²See foot-note 8 on page 288, ante.

of 1911.]

(Chapter VII.—Rules.—Chapter VIII.—Supplemental Provisions.—Sections 142—146.)

and duly sanctioned, it shall be published by the ¹[State Government] by notification, and such publication shall be conclusive proof that the rule has been duly made.

142. (1) The Chairman shall cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and shall cause printed copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy.

(2) Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

143. Copies in English and Bengali, of all rules made under section 137 or section 138 shall be hung or affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.

144. The ¹[State Government] may at any time, by notification, cancel any rule made by the Board under section 138.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

Status of Trustees, etc.

145. Every Trustee, and every officer and servant of the Board, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Contributions towards leave-allowances and pensions of ²[servants of the Government].

146. The Board shall be liable to pay such contributions for the leave-allowances and pensions of any ³[servant of the Government] employed as Chairman or as an officer or servant of the Board, as a member or officer or servant of the Tribunal, as may be ⁴[required, by the conditions of his service under the Government, to be paid by him or on his behalf.]

¹ See foot-note 3 on page 288, ante.

² The words "servants of the Crown" were originally substituted for the words "Government servants" by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946), and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³ The words "servant of the Crown" were originally substituted for the words "Government servant" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴ The words "required, by the conditions of service under the Crown, to be paid by him or on his behalf" were originally substituted for the words "prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Printing and sale of copies of rules.

Exhibition of copies of rules.

Power of State Government to cancel rules made under section 138.

Trustees, etc., deemed public servants.

Contributions by Board towards leave-allowances and pensions of servants of the Government employed under this Act.

[Ben. Act V

(Chapter VIII.—Supplemental Provisions.—Sections 147—149.)

Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

Power to extend the Calcutta Municipal Act, 1951, to areas, near Calcutta, to which provisions of the present Act have been extended.

147. (1) When any provision of this Act has been extended to any area under section 1, sub-section (3), the ¹[State Government] may, by notification published in the ²[*Official Gazette*] and in such other manner (if any) as it may consider necessary, extend to such area the ³[Calcutta Municipal Act, 1951], or any portion thereof, subject to such restrictions and modifications (if any) as may be specified in such notification.

West Ben. XXXIII of 1951.

(2) When the said ³[Calcutta Municipal Act, 1951], or any portion thereof, is extended under sub-section (1) to any area, then—

(a) the Bengal Municipal Act, ⁴[1932], or the Bengal Local Self-Government Act of 1885, as the case may be, or the corresponding portion of such Act, as the case may be, if in force in such area, shall be deemed to be repealed therein, and,

Ben. Act XV of 1932.
Ben. Act III of 1885.

(b) except as the ¹[State Government] may otherwise, by notification, direct, all rules, by-laws, regulations, orders, directions and powers made, issued or conferred under the portions of the said ³[Calcutta Municipal Act, 1951], which have been so extended and in force at the date of such extension, shall apply to the said area, in supersession of all corresponding rules, by-laws, regulations, orders, directions and powers (if any) made, issued or conferred under the said Bengal Municipal Act, ⁴[1932], or the said Bengal Local Self-Government Act of 1885, as the case may be.

Publication of notifications under sections 1 (3) and 147 (1) in draft, for criticism.

148. (1) Before finally publishing any notification under section 1, sub-section (3), or section 147, sub-section (1), the ¹[State Government] shall publish a draft of the same in the ²[*Official Gazette*].

(2) Any ratepayer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the ¹[State Government] within six weeks from its publication, and the ¹[State Government] shall take such objection into consideration.

Facilities for movement of the population.

Powers of the Board for facilitating movement of the population.

149. With a view to facilitating the movement of the population in and around the Calcutta Municipality, the Board may from time to time,—

(1) subject to any conditions they may think fit to impose,—

¹ See foot-note 3 on page 288, *ante*.

² See foot-note 8 on page 289, *ante*.

³ Substituted for the words "Calcutta Municipal Act, 1928" by sec. 68 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

⁴ These figures were substituted for the figures "1884" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Sections 150—153.)

- (a) guarantee the payment, from the funds at their disposal, of such sums as they may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion ; or
- (b) make such payments as they may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work means of locomotion ; or
- (2) either singly or in combination, with any other person, construct, maintain and work any means of locomotion, under the provisions of any law applicable thereto, or
- (3) construct, or widen, strengthen or otherwise improve, bridges :

Provided that no guarantee or subsidy shall be made under clause (1), and no means of locomotion shall be constructed, maintained or worked under clause (2), without the sanction of the ¹[State Government].

Telegraph and Railways Acts.

150. Nothing in this Act shall be deemed to affect the provisions of the Indian Telegraph Act, 1885, or the Indian Railways Act, 1890.

Saving of
Telegraph
and
Railways
Acts.

XIII of
1885.
IX of 1890.

Legal Proceedings.

151. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,

of offences.

all offences against this Act or any rule made hereunder shall wherever committed, be cognizable by a Presidency Magistrate ;

and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence by reason only of being liable to pay any tax imposed by this Act or of his being benefited by the funds to the credit of which any fine imposed by him will be payable.

152. No person shall be liable to punishment for any offence against this Act or any rule made hereunder unless complaint of such offence is made before a Presidency Magistrate within three months next after the commission of such offence.

Limitation
of time for
prosecu-
tion.

153. If any person, who has been summoned to appear before a Presidency Magistrate to answer a charge of an offence against this Act or any rule made hereunder which is punishable with fine only, fails to appear at the time and place mentioned in the summons, the Magistrate may, if service of the summons is proved to his satisfaction, and if no sufficient cause is shown for the non-appearance of such person, hear and determine the case in his absence.

Power to
hear case
in absence
of accused
when
summoned
to appear.

Act V of
1898.

¹See foot-note 3 on page 268, ante.

[Ben. Act V

(Chapter VIII.—Supplemental Provisions.—Sections 154—157.)

Powers of
Chairman
as to
institution,
etc., of
legal
proceed-
ings and
obtaining
legal
advice.

154. The Chairman may, subject to the control of the Board,—

- (a) institute, defend or withdraw from, legal proceedings under this Act or any rule made hereunder ;
- (b) compound any offence against this Act or any rule made hereunder which, under any law for the time being in force, may lawfully be compounded ;
- (c) admit, compromise or withdraw any claim made under this Act or any rule made hereunder ; and
- (d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

Indemnity
to Board,
etc.

155. No suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made hereunder.

Notice of
suit

Board, etc.

156. No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made hereunder,

until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims ;

and the plaint must contain a statement that such notice has been so delivered or left.

Police.

then of the
Police.

157. (1) The Commissioner of Police and his subordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act.

(2) It shall be the duty of every police-officer who is subordinate to the Commissioner of Police—

- (i) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against this Act or any rule made hereunder, and
- (ii) to assist the Chairman or any officer or servant of the Board reasonably demanding his aid for the lawful exercise of any power vesting in the Chairman or in such officer or servant under this Act or any such rule.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Sections 158—160.)

158. (1) Every police-officer shall arrest any person who commits, in his view, any offence against this Act or any rule made hereunder, if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address, or gives a name or address which such officer has reason to believe to be false.

Arrest of offenders.

(2) No person so arrested shall be detained in custody after his true name and address are ascertained, or without, the order of a Magistrate, for any longer time, not exceeding at the most twenty-four hours from the arrest, than is necessary for bringing him before a Magistrate.

(3) On the written application of the Chairman, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made hereunder.

Evidence.

159. Whenever, under this Act or any rule made hereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

Proof of consent, etc., of Board or Chairman or officer or servant of Board.

(a) the Board or the Chairman, or

(b) any officer or servant of the Board,

a written document, signed, in case (a) by the Chairman, and in case (b) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Validation.

160. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

Validation of acts and proceedings.

(a) the existence of any vacancy in, or any defect in the constitution of, the Board or any Committee ; or

(b) any person having ceased to be a Trustee ; or

(c) any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, having voted or taken any other part in any proceeding in contravention of section 23 ; or

(d) the failure to serve a notice under section 45 on any person, where no substantial injustice has resulted from such failure ; or

(e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed as prescribed in section 18, clause (h), shall be taken to have been duly convened and to be free from all defect and irregularity.

[Ben. Act V.]

(Chapter VIII.—Supplemental Provisions.—Sections 161—165.)

Compensation.

General
power of
Board to
pay com-
pensation.

161. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made or scheme sanctioned hereunder, in the Board or the Chairman or any officer or servant of the Board.

Compensation to be paid by offenders for damage caused by them.

162. (1) If, on account of any act or omission, any person has been convicted of an offence against this Act or any rule made hereunder, and, by reason of the same act or omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Public Notices and Advertisements.

Public notices how to be made known.

163. Every public notice given under this Act or any rule made hereunder shall be in writing over the signature of the Chairman,

and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

Newspapers in which advertisements or notices to be published.

164. Whenever it is provided by this Act or any rule made hereunder that notice shall be given by advertisement, in local newspapers, or that notification or any information shall be published in local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers.

Signature and Service of Notices or Bills.

Stamping signature on notices or bills.

165. Every notice or bill, which is required by this Act or by any rule made hereunder to bear the signature of the Chairman or of any other trustee or of any officer or servant of the Board, shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such other Trustee or of such officer or servant, as the case may be, stamped thereupon.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Sections 166—168.)

166. When any notice, bill or other document is required by this Act or any rule made hereunder to be served upon or issued or presented to any person, such service, issue or presentation shall be effected—

Service
how to be
effected.

- (a) by giving or tendering such document to such person ; or
- (b) if such person is not found, by leaving such document at his last known place of abode in Calcutta, or by giving or tendering the same to some adult male member or servant of his family ; or
- (c) if such person does not reside in Calcutta, and his address elsewhere is known to the Chairman, by forwarding such document to him by registered post under cover bearing the said address ; or
- (d) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the land (if any) to which the document relates.

Surveys.

167. The Board may—

- (a) cause a survey of any land ¹[or a civic or diagnostic survey of any area] to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by any other local authority.

Power to
make
surveys, or
contribute
towards
their cost.

Power of Entry.

168. (1) The Chairman ²[or any other officer of the Board authorised by him in this behalf] may, with or without assistants or workmen, enter into or upon any land, in order—

Power of
entry.

- (a) to make any inspection, survey, measurement, valuation or inquiry,
 - (b) to take levels,
 - (c) to dig or bore into the sub-soil,
 - (d) to set out boundaries and intended lines of work,
 - (e) to mark such levels, boundaries and lines by placing marks, and cutting trenches, or
 - (f) to do any other thing,
- whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Board intend to frame hereunder :

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house, and no public building or hut which is used as a dwelling-place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty four hours' previous written notice of the intention to make such entry ;

¹Inserted by sec. 69 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Inserted by sec. 70, *ibid.*

(Chapter VIII.—Supplemental Provisions.—Sections 169—171.)

- (c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;
- (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose, for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Board, whose decision shall be final.

Penalties.

Punishment for acquiring share or interest in contract, etc., with the Board.

169. If any Trustee, or any officer or servant of the Board knowingly acquires, directly or indirectly, by himself or by any partner, employer or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by, or on behalf of, the Board,

not being a share or interest such as, under sub-section (2) of section 9, it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code.

Act XLV
of 1860.

Penalty for removing fence, etc., in street.

170. If any person, without lawful authority,—

- (a) removes any fence or shoring-timber, or removes or extinguishes any light, set up under section 59, or
- (b) infringes any order given, or removes any bar, chain or post fixed, under section 60, sub-section (2),

he shall be punishable with fine which may extend to fifty rupees.

Penalty for building within street alignment or building line of a projected public street.

171. ¹[(1)] ²[If any person, without the permission of the Chairman required by section 63, sub-section (8), erects, re-erects or adds to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the ³[State Government] under the said section], he shall be punishable—

- (a) with fine which may extend, in the case of a masonry building or a wall, to five hundred rupees, and, in the case of a hut, to fifty rupees, and

¹Section 171 was re-numbered as sub-section (1) of that section and after that sub-section as so re-numbered sub-section (2) was added by sec. 71 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²These words, brackets and figures within square brackets were substituted for the previous words and figures by sec. 5 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

³See foot-note 3 on page 228, ante.

of 1911.]

Chapter VIII.—Supplemental Provisions.—Sections 171A—174.)

- (b) with further fine which may extend, in the case of a masonry building or a wall, to one hundred rupees, in the case of a hut, to ten rupees for each day after the first during which the projection continues.

¹(2) In either case, the court may further direct that the erection, re-erection or addition shall be demolished forthwith.

²171A. If the owner for the time being of any wall or building in respect of which an agreement has been executed as provided in section 63, sub-section (9), fails—

Penalty for failure to remove wall or building in respect of which agreement has been executed.

- (a) to remove such wall or building, or any specified portion thereof, when so required by notice issued under that sub-section, or,

- (b) within fifteen days from the receipt of such notice, to authorize the Chairman, by permission in writing, to remove the said wall, building or portion,

he shall be punishable—

- (i) with fine which may extend, in the case of a masonry wall or building, to one hundred rupees, and, in the case of a hut, to twenty rupees ; and

- (ii) with further fine which may extend, in the case of a masonry wall or building, to ten rupees, and, in the case of a hut, to five rupees, for each day after the first during which the failure continues.

172. [Penalty for failure to set back building or wall on requisition]—Rep. by sec. 7 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

173. If any person fails to comply with any requisition made under section 131, he shall be punishable—

Penalty for failure to comply with requisition made by auditor.

- (a) with fine which may extend to one hundred rupees ; or
(b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.

174. If any person—

Penalty for obstructing contractor or removing mark.

- (a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made hereunder, or

- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorized by this Act or any rule made or scheme sanctioned hereunder,

he shall be punishable with fine which may extend to two hundred rupees. or with imprisonment for a term which may extend to two months.

¹ See foot-note 1 on page 362, ante.

² Section 171A was inserted by sec. 6 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

(Chapter VIII.—Supplemental Provisions.—Sections 174A—177.)

¹ Recovery of expenses.

Removal
of wall or
building
and re-
covery of
expenses.

174A. When a written notice, issued under section 63, sub-section (9), for the removal of a wall or building, or any portion thereof, is not complied with by the owner thereof for the time being as provided in section 171A, the Chairman may proceed to remove such wall, building or portion and the expenses incurred in effecting such removal shall be recoverable by sale of the materials or other things removed.

175. [*Fines, damages and proceeds of confiscations to be paid to Board.*—Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

Suspension or abolition, and re-imposition of taxation or Municipal contributions.

Suspension or
abolition,
and re-
imposition,
of taxa-
tion or
Municipal
contri-
butions.

176. (1) Whenever the ¹[State Government] considers that any duty or tax imposed by Chapter V, or any payment required by section 88, or any portion of any such duty, tax or payment, as the case may be, is not required for the purposes of this Act, it may, by notification, * * *

- (a) suspend, for any specified period, the levy of such duty or tax or any specified portion thereof, or the making of such payment or any specified portion thereof, or
- (b) abolish such duty, tax or payment, or any specified portion thereof, from a date to be specified in the notification.

(2) If at any time the ¹[State Government] considers that any duty, tax or payment, or any portion thereof, which has been suspended or abolished under sub-section (1) is required for the purposes of this Act, it may, by notification, ** * * cancel, such suspension or abolition, wholly or in part, as it may think fit, from a date to be specified in the notification.

Dissolution of Board.

Ultimate
dissolution
of Board,
and
transfer of
their assets
and liabilities
to the
Corpora-
tion.

177. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Board, in the opinion of the ¹[State Government], unnecessary, the ¹[State Government] may, by notification, * * * declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification; and the Board shall be deemed to be dissolved accordingly.

¹This heading and sec. 174A were inserted by sec. 8 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²See foot-note 8 on page 288, ante.

³The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

of 1911.]

(The Schedule.—Sections 1—1A.)

(2) From the said date—

- (a) all properties, funds and dues which are vested in or realizable by the Board and the Chairman, respectively, shall vest in and be realizable by the Corporation and the ¹[Commissioner of the Corporation] respectively; and
- (b) all liabilities which are enforceable against the Board shall be enforceable only against the Corporation; and
- (c) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Board, and of realizing properties, funds and dues referred to in clause (a), the functions of the Board and the Chairman under this Act shall be discharged by the Corporation and the ¹[Commissioner of the Corporation], respectively; and
- (d) the Corporation shall keep separate accounts of all moneys respectively received and expended by them under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.

THE SCHEDULE.

(Referred to in section 71.)

I of 1894..

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894.

1. After clause (e) of section 3 the following shall be deemed to be inserted, namely:—

“(e) the expression “local authority” includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911.”

Amendment of section 3.

Ben. Act V of 1911.

²1A. After section 6, the following section shall be deemed to be inserted, namely:—

“6A. When acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911—

New section 6A.

Publication of notification, hearing of objections and declaration under the Calcutta Improvement Act to be substituted for those under sections 4, 5A and 6.

¹The words “Executive Officer of the Corporation” were originally substituted for the words “Chairman of the Corporation” by sec. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and thereafter the word “Chairman” was substituted for the words “Executive Officer” by sec. 72 of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Inserted by sec. 74(a) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

[Ben. Act V

(The Schedule.—Sections 1B—5.)

- (i) the publication of a notice of the improvement scheme under sub-section (2) of section 43 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as publication of a notification in the *Official Gazette* and giving public notice of the substance of such notification in the locality under section 4.

Ben. Act
V of 1911.

- (ii) Proceedings under section 45 and sub-section (1) of section 47 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as proceedings under section 5A.

- (iii) The publication of a notification under section 49 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as a declaration under section 6."

- ¹1B. In section 11, before the words "make an award under his hand" the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be inserted.

2. Rep. by sec. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act 1 of 1922).

Amend-
ment of
section 15.

3. In section 15, for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted.

Amend-
ment of
section 17.

4. (1) In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely :—

"(4) sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy."

"(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) or section 9, and shall hear without any avoidable delay any objections which may be urged by them."

"(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. After section 17 the following shall be deemed to be inserted namely :—

"17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board,

¹Para. 1B was inserted by sec. 74(h), of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

of 1911.]

(The Schedule.—Sections 6—9.)

subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6, 7, 8 and 9. (1)—*Rep. by sec. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

9. ¹(1) sub-section (2) of section 23 shall be deemed to be omitted.

**Amend-
ment of
section 23.**

(2) At the end of section 23 the following shall be deemed to be added, namely :—

"(3) For the purposes of clause *first* of sub-section (1) of this section,—

²(a) when acquisition is proposed to be made by the Board of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911, the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notice under sub-section (2) of section 43 of the said Act ; and in other cases, the market-value shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notification relating thereto under section 4 ;

³(bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

³(bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street ⁴[or having erected, re-erected or added to any wall or building as aforesaid with such permission fails to remove such wall or building or any specified portion thereof when so required by notice issued under sub-section (9) of the said section], then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;

Ben. Act V
of 1911.

¹Inserted by sec. 74 (c)(i) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for clauses (a) and (b) by sec. 74 (c)(ii), *ibid.*

³Clauses (bb) and (bbb) were inserted by sec. 9 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

⁴Inserted by sec. 74(c)(iii) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

[Ben. Act V

(The Schedule.—Sections 10, 11.)

- (c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before ¹[the date with reference to which the market-value is to be determined] such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for acquisition of the land being taken under this Act ;
- (d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and
- (e) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

Amend-
ment of
section 24.

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date ²[with reference to which the market-value is to be determined], unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

11. After section 24 the following shall be deemed to be inserted, namely :—

New sec-
tion 24A.

"24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

Further provisions
for determining
compensation.

(1) when any interest in any land acquired under this Act has been acquired after the date ³[with reference to which the market-value is to be determined], no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall

¹Substituted for the words "the aforesaid declaration was published" by sec. 74 (c)(iv) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Substituted for the words "of the publication of the declaration under section 6" by sec. 74 (d), *ibid.*

³Substituted for the words "of the publication of the declaration under section 6" by sec. 74 (e)(i), *ibid.*

of 1911.]

(The Schedule.—Sections 12—13.)

not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building.

Ben. Act V
of 1911.

¹(4) If any tank in any area comprised within a scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911, is, on account of accumulation of filth, rubbish or putrid matter or of the percolation of foul water from the kitchen, court-yard, privy or urinal, or for any other cause, in an unhygienic condition or contains water which is discoloured or malodorous or unfit for use for domestic purposes, or is a source of nuisance or disease, then notwithstanding anything contained in any law for the time being in force, the Tribunal shall in determining the amount of compensation, make such deduction from the market-value of the tank according to its present disposition as will, in their opinion, be a reasonable set-off against the cost to society in unhealthiness, disease and discomfort caused by the tank being kept in such an unhygienic or insanitary condition.

12. [Rep. by sec. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).]

²12A. Sub-section (2) of section 27 shall be deemed to be omitted.

Amend-
ment of
section 27.

13. After section 48 the following shall be deemed to be inserted, namely :—

New sec-
tions 48A
and 48B.

“48A. (1) If, within a period of two years from the date of the ³[issue of the public notice under sub-section (1) of section 9], in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

Compensa-
tion to be
awarded
when land
not acquired
within
two years.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

¹Clause (4) was added by sec. 74(e) (ii) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955).

²Paragraph 12A was inserted by sec. 74(f), *ibid.*

³Substituted for the words “publication of the declaration under section 6” by sec. 74(g), *ibid.*

[Ben. Act V of 1911.]

(The Schedule.—Section 14.)

Sections 48
and 48A
not to apply
in certain
cases.

"48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

Ben Act V
of 1911.

Amend-
ment of
section 49.

¹14. For sub-section (1) of section 49, the following sub-section shall be deemed to be substituted namely:—

"(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the acquisition of the part will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable :

Provided that if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory, or building impracticable, the Collector shall refer the determination of such question to the Court and shall not take possession of such part until after the question has been determined.

In deciding on such a reference the Court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building."

¹Paragraph 14 was inserted by sec. 74(h) of the Calcutta Improvement (Amendment) Act, 1955 (West Ben. Act XXXII of 1955). The original paragraph 14 was repealed by sec. 15 of the Calcutta Improvement (Amendment) Act, 1981 (Ben. Act VIII of 1981).

Bengal Act II of 1912

(The Bengal Mining Settlements Act, 1912.)

AMENDED	{ Ben Act IV of 1931. West Ben. Act XXXIV of 1950.
ADAPTED	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Inde- pendence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(30th March, 1912.)

An Act to provide for the better control and sanitation of Mining Settlements in Bengal.^a

Whereas it is expedient to provide for the better control and sanitation of mining settlements in Bengal^a,

Short title
and ex-
tent.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Mining Settlements Act, 1912 ; and

Definitions.

(2) It extends to the whole of ^a[West Bengal] * * *

2. The expressions “agent,” “employed,” “mine,” and “owner,” as used in this Act, shall have the same meaning as in section 3 of the Indian Mines Act, ^a[1923].

IV of 1923.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1911, Pt IV, page 841 ; for Report of the Select Committee, see *ibid*, 1912, pages 136, 137 ; for Proceedings in Council, see *ibid*, 1911, Pt. IVA, pages 346 to 348, *ibid*, 1912, Pt IVA., page 27, also the *Calcutta Gazette, Extraordinary*, dated the 30th March, 1912, pages 140 to 143.

LOCAL EXTENT.—This Act originally extended to the whole of the former Province of Bengal.

²This means Bengal as constituted in March, 1912.

³These words were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The words including the Sonthal Parganas were omitted by sec. 2 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

⁵These figures were substituted for the figures “1901” by sec 3, *ibid*.

The Mines Act, 1923 (IV of 1923) has been repealed and re-enacted by the Mines Act, 1952 (XXXV of 1952).

(Sections 3, 4.)

Appoint-
ment of
Mines
Board of
Health.

3. (1) The ¹[State Government] may, by notification in the ²[Official Gazette], appoint, for any area or areas in which persons employed in a mine reside, a Mines Board of Health, consisting of not less than five or more than ³[fourteen] persons ; and shall appoint one of the members to be Chairman.

(2) Two of the persons appointed under sub-section (1) shall be nominated by owners of mines or their representatives :

Provided that, if the Board consists of more than five members, three shall be so nominated.

(3) One of the persons appointed under sub-section (1) shall be nominated by persons who receive royalties, rents or fines from mines.

(4) Nominations under sub-section (2) or sub-section (3) must be made under such procedure, and within such period, as may be prescribed by rules made under this Act ; and, in default of nomination in accordance with such rules, the ¹[State Government] may appoint any person it thinks fit.

Procedure
for declar-
ing area to
be a min-
ing settle-
ment.

4. (1) The ¹[State Government] may, of its own motion, or after considering any report submitted to it by a Mines Board of Health, publish a notice in the ²[Official Gazette] and in such other manner (if any) as it may think fit, intimating its intention to declare any area (not being or forming part of a mine) to be a mining settlement for the purposes of this Act.

(2) The ¹[State Government] shall consider any objections to the intended declaration which may be submitted to it in writing within such period as may be specified in this behalf in the said notice,

and may then, by notification in the ²[Official Gazette], declare that any area or portion of an area referred to in the said notice shall, for the purposes of this Act, be a mining settlement and be subject to the authority of such Mines Board of Health as the ¹[State Government] may designate.

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "local official Gazette" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word "nine" by sec. 2 of the Bengal Mining Settlements (West Bengal Amendment) Act, 1950 (West Ben. Act XXXIV of 1950).

of 1912.]

(Sections 5, 6.)

5. (1) The ¹[State Government], shall appoint as many Sanitary Officers as it may consider necessary for mining settlements, and shall declare the Mines Board of Health to which each such officer shall be subordinate.

Appointment, status and duties of Sanitary Officers..

Act XLV of 1860.

(2) Every Sanitary Officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) It shall be the duty of a Sanitary Officer appointed to a mining settlement or any part thereof—

(a) to report to the Mines Board of Health what measures should, in his opinion, be taken—

(i) to provide for the supply of filtered, boiled or other water ;

(ii) to provide for sanitation and conservancy ;***

(iii) to provide for the housing of residents ; and

^a(iv) to provide for medical relief to residents ; and

(b) to exercise, subject to the control of the Mines Board of Health to which he is subordinate, such other functions, consistent with the objects of this Act and calculated to prevent the outbreak or spread of dangerous epidemic disease, as the ¹[State Government] may by general or special order, direct, or as may be delegated to him by such Board.

6. (1) If the Mines Board of Health approve any measures reported by a Sanitary Officer under clause (a) of sub-section (3) of section 5,

or if they consider that any other measure should be taken to provide for any of the purposes referred to in that clause, the Board shall serve,—

Notice requiring owners to execute and maintain works of sanitation, or to carry on periodical sanitary operations.

(a) on the owner of all mines in which are employed persons residing in the mining settlement, or in the part of the mining settlement to which such measures relate, or

(b) on the holders of the land occupied by such mining settlement or part, if they are not the owners of the said mines,

a notice specifying such measures and requiring such owners or landholders—

(i) to execute, within a period to be fixed by the notice, all works that the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed, or

(ii) to carry on continuously such periodical operations as the Board may direct, for carrying such measures into effect, or

¹See foot-note 1 on page 372, *ante*.

^aThe word “and” was omitted by sec. 8(1) of the Bengal Mining Settlements (West Bengal Amendment) Act, 1950 (West Ben. Act XXXIV of 1950).

^aThis sub-clause (iv) was added by sec. 3(2), *ibid*.

(Sections 7—10.)

(iii) both to execute and maintain works and to carry on operations as aforesaid.

(2) Nothing in this section shall apply to landholders other than proprietors, permanent tenure-holders, rent-free holders or holders of a maintenance grant.

Power for
Mines
Board of
Health to
execute
work in
default of
owners.

7. If any work required by a notice served under section 6 be not executed to the satisfaction of the Board within the period fixed by the notice, or within such further period (if any) as may be allowed by the Board, or

if any work executed in pursuance of any such notice be not maintained in repair to the satisfaction of the Board, or

if any operations required by any such notice be not carried on to the satisfaction of the Board,

the Board, after serving a warning notice on the defaulters, shall prepare an estimate of the cost of the work which ought, in their opinion, to be carried out, and may entertain any establishment necessary for the preparation of such estimate, and may also cause such work to be executed.

Power for
Chairman
to dis-
charge
functions
of Board
in certain
cases.

8. Any of the powers or duties conferred or imposed by section 6 or section 7 upon a Mines Board of Health may be exercised or performed by the Chairman of the Board in any case which he considers to be of such urgency as to render it impracticable to hold a meeting of the Board.

Service of
notices.

9. Any notice sent by post under section 6 or section 7 shall be forwarded under registered cover.

Charging,
apportion-
ment and
recovery of
expenses.

10. (1) All expenses incurred by a Mines Board of Health for the purposes of this Act, other than expenses under section 7 and section 8, shall be charged to—

(a) all owners of mines in which are employed persons residing in the mining settlements which are subject to the authority of that Board, and

(b) all persons who receive any royalty, rent or fine from such mines.

(2) All expenses incurred by a Mines Board of Health under section 7, or by the Chairman thereof under section 8, whether or not they exceed the estimate prepared under the former section,

and all expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6,

shall be charged to—

(i) all owners of mines in which are employed persons residing in the settlement or part, and

(ii) all persons who receive any royalty, rent or fine from such mines:

of 1912.]

(Section 11.)

Provided that, if it can be shown to the satisfaction of the Board that the insanitary condition is distinctly referable to any act or omission on the part of one or more mine-owners in respect to his or their property, the Board may direct that the expenses incurred shall be payable by such owner or owners only.

(3) Save in the case specified in the proviso to sub-section (2), the expenses referred to in sub-sections (1) and (2) shall be charged to the said owners and persons in such proportions as the ¹[State Government] may, from time to time, direct :

Provided that the assessment shall be based—

- (i) in the case of owners of mines, on the output of their mines, and
- (ii) in the case of the receivers of any royalty, rent or fine, on the road cess payable by such persons.

(4) All expenses chargeable under this section shall be recoverable as if they were arrears of land-revenue.

²(4a) The expenses due from any owner in respect of any mine shall, subject to the prior payment of the land-revenue (if any) due to the Government thereupon, be a first charge upon the said mine, and upon the movable property (if any) found within such mine and belonging to the said owner.

(5) When any expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6, have been recovered, they shall be repaid to him :

Provided that, if any question arises as to the amount of expenses incurred by such landholder, the award of the Mines Board of Health shall, subject to an appeal to the Commissioner, be final.

11. (1) The ¹[State Government] may, by notification in the ³[Official Gazette], make rules for carrying out the purposes and objects of this Act in respect of all mining settlements or any groups or classes of mining settlements.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the nomination, appointment and tenure of office of members of a Mines Board of Health and regulate the procedure of such Board and the powers and functions of the Chairman ;
- (b) regulate all expenditure to be incurred by a Mines Board of Health, and the methods under which sums due to it may be calculated and recovered ;
- (c) regulate the duties and powers of Sanitary Officers, and provide for appeals from their orders ;

¹See foot-note 1 on page 372, *ante*.

³Sub-section (4a) was inserted by sec. 4 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²See foot-note 2 on page 372, *ante*.

(Section 11A.)

1*

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) The date to be specified as that on or after which a draft of rules proposed to be made under this section will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(5) When a Mining Board has been constituted under ²[section 10 of the Indian Mines Act, 1923³.] any rule to be made under this Act shall, before it is published for criticism under sub-section (3), be referred to the Mining Board, and the rule shall not be so published until the said Board has been consulted as to the suitability of its provisions. IV of 1928.

(6) All rules made under this section shall be published in the ⁴[*Official Gazette*], and; on such publication, shall have effect as if enacted in this Act.

⁵11A. (1) A Mines Board of Health may, after previous publication, make by-laws—

Power of
Board to
make by-
laws.

- (i) defining the duties of owners, agents and managers of mines in respect of a mining settlement, and of all persons acting under them ;
- (ii) defining the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers of mines, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished, and the particulars to be contained in them ;
- (iii) defining the plans (if any) to be kept by owners, agents and managers of mines within a mining settlement, and the manner and places in which they are to be kept for purposes of record ;
- (iv) providing for the supply of filtered, boiled or other water and for sanitation and conservancy in the mining settlement ;
- (v) providing for the taking of measures to prevent the outbreak or spread of and to combat epidemic and other diseases in the mining settlement ;

¹Clauses (a) to (i) were omitted by sec. 5(a) of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²These words and figures were substituted for the words and figures "section 9 of the Indian Mines Act, 1901" by sec. 5(b), *ibid.*

³See foot-note 5 on page 371, *ante*.

⁴See foot-note 2 on pages 372, *ante*.

⁵Section 11A was inserted by sec. 6 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

of 1912.]

(Section 12.)

- (vi) providing against the accumulation of water (other than water in mines) in the mining settlement ;
- (vii) regulating the construction and sanitation of residential buildings within the mining settlement ;
- (viii) prescribing standards of accommodation in cases where accommodation is provided for persons employed in mines within the mining settlement ;
- (ix) defining the medical assistance to be provided by the owners of mines within the mining settlement for the labourers employed under them ;
- (x) providing for the prevention or abatement of nuisances affecting the public health committed by any persons within the limits of the mining settlement ;^{1*}
- ²(xi) providing for medical relief to residents of the mining settlement ; and
- ³(xii) generally for carrying out the purposes of this Act and for promoting the safety, health and welfare of persons employed in mines within the mining settlement.

(2) By-laws made under this section shall not take effect until they have been confirmed by the ⁴[State Government] and published in the ⁵[Official Gazette].

12. A Sanitary Officer may, within any mining settlement for which he is appointed,—

Powers of
Sanitary
Officers.

- (a) make such examination and inquiry as he thinks fit, in order to ascertain whether the provisions of this Act and of the rules ⁶[,by-laws] and orders made thereunder are observed ;
- (b) enter, with such assistants (if any) as he thinks fit, inspect and examine any mining settlement or any part thereof, at all reasonable times by day or by night ;
- (c) examine into, and make inquiry respecting, the sanitary condition of any mining settlement or any part thereof, and the sufficiency of the rules ⁷[and by-laws] for the time being in force in the settlement ; and
- (d) do all other things required of him by or under this Act.

¹The word "and" was omitted by sec. 4(1) of the Bengal Mining Settlements (West Bengal Amendment) Act, 1950 (West Ben. Act XXXIV of 1950).

²New clause (xi) was added by sec. 4(3), *ibid.*

³Existing clause (xi) was re-numbered as clause (xii) by sec. 4(2), *ibid.*

⁴See foot-note 1 on page 372, *ante*.

⁵See foot-note 2 on page 372, *ante*.

⁶This word was inserted by sec. 7(a) of the Bengal Mining Settlements (Amendment) Act, 1981 (Ben. Act IV of 1981).

⁷These words were inserted by sec. 7(b), *ibid.*

(Sections 13—15.)

Facilities
to be
afforded
to Sanitary
Officers.

13. The owners, agents and managers of mines in which are employed persons residing in any mining settlement, or the owners of the land occupied by such settlement, if they are not the owners of such mines,

shall furnish the Sanitary Officer, on requisition, with all reasonable facilities for making any entry, inspection, examination or inquiry under this Act, in relation to the sanitary condition of such settlement.

Powers of
Mines
Board
of Health
for obtain-
ing
evidence.

14. A Mines Board of Health shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by any such Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

Act XLV
of 1860.

Penalties
for
offences.

15. (1) Whoever obstructs any Sanitary Officer in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any mining settlement, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever makes, gives or delivers any notice or return required by or under this Act which contains a statement, entry or detail which is not, to the best of his knowledge or belief, true, shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule ¹[by-law] or order made thereunder; or

(b) contravenes any provision of this Act or any ²[rule, by-law or order made thereunder] for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (a) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

(4) All fines realised under this section shall be made over to the Mines Board of Health at whose instance the prosecution was instituted, to be employed in furtherance of the objects of this Act.

¹This word was inserted by sec. 8(a) of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²These words were substituted for the words "rule or order thereunder" by sec. 8(b), *ibid*.

of 1912.]

(Sections 16—19.)

16. No prosecution shall be instituted against any owner, agent or manager of a mine for any offence against this Act or any ¹[rule, by-law or order made thereunder,] except at the instance of a Mines Board of Health.

Prosecution
of owner,
agent or
manager.

17. No Court shall take cognizance of any offence against this Act or any ¹[rule, by-law or order made thereunder,] unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Limitation
of prosecu-
tions.

18. No Court inferior to that of a Magistrate of the first class or Subdivisional Magistrate shall try any offence against this Act or any ¹[rule, by-law or order made thereunder,] which—

Cognizance
of offences.

(a) is alleged to have been committed by any owner, agent or manager of a mine, or

(b) is punishable with imprisonment.

²18A. A Mines Board of Health shall comply with all such directions as may be given to it from time to time by the State Government.

Board to
comply
with
directions
of Govern-
ment.

19. The ³[State Government] may reverse or modify any order passed under this Act by any authority.

Power of
State
Govern-
ment to
alter or
rescind
orders.

¹These words were substituted for the words "rule or order thereunder" by sec. 9 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²Section 18A was inserted by sec. 5 of the Bengal Mining Settlements (West Bengal Amendment) Act, 1950 (West Ben. Act XXXIV of 1950).

³See foot-note 1 on page 372, *ante*.

Bengal Act II of 1913

(The Bengal Board of Revenue Act, 1913.)¹

REPEALED IN PART	...	{ Act XXXVIII of 1920. Ben. Act I of 1939.
AMENDED	... ..	West Ben. Act XXVII of 1953. (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	... ..	(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(23rd April, 1913.)

An Act to alter the constitution of the Board of Revenue for Bengal.

Whereas it is expedient to alter the constitution of the Board of Revenue for Bengal ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 and 56
Vict., c.
14.

It is hereby enacted as follows :—

1. This Act may be called the Bengal Board of Revenue Act, 1913. Short title.
2. The Board of Revenue for ²[the State of West Bengal] shall be called the Board of Revenue for ³[West Bengal]. Designa-
tion of
Board.
3. The said Board shall consist of one Member only, to be appointed by the ⁴[State Government] by notification in the ⁵[Official Gazette] : Number of
Members
of Board.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1913, Pt. IV, page 5 ; for Report of the Select Committee, see *ibid.* Pt. IV, page 62 ; for Proceedings in Council, see *ibid.* Pt. IVA, pages 13, 14, 22 to 26 and 399.

LOCAL EXTENT.—This Act extends to the whole of the present State of West Bengal.

²These words were substituted for the words "the Presidency of Fort William in Bengal" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³These words were substituted for the word "Bengal" by paragraph (2) of article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950

⁵These words were substituted for the words "local official Gazette" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act II]

(Sections 4—7 and the Schedule.)

Provided that the ¹[State Government] may at any time, by like notification, ** * * * *
appoint a temporary additional Member.

Powers
and duties
of addi-
tional
Member.

4. An Additional Member of the Board of Revenue appointed under the proviso to section 3 shall exercise and perform such powers and duties of the Board as the ¹[State Government] may direct.

Construc-
tion of
references
to former
Boards.

5. All references in any enactment, or in any notification, order, scheme, rule, form or by-law issued, made or prescribed under any enactment, to—

(a) the Board of Revenue as constituted under the Bengal Board of Revenue Regulation, 1822^a, and under clause First of section 4 of the Bengal Revenue Commissioners Regulation, 1829, or

Ben. Regn.
III of
1822.

Ben. Regn.
I of 1829.

(b) the Board whose functions were transferred to the said Board of Revenue by the Bengal Board of Revenue Act, 1850^a,

XLIV of
1850.

shall be construed as references to the Board as re-constituted by or under this Act.

Review of
orders by
Board.

6. (1) Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for a review of the same; and, if the Board considers there are sufficient reasons for so doing, it may review the order and pass such further order as it thinks fit.

(2) Every application under sub-section (1) for a review of any order must be made within a period of three months from the date of the order:

Provided that the Board may, in its discretion in any case extend such period, if sufficient reasons be shown for so doing.

Contempt.

⁴⁷. The Board of Revenue for West Bengal shall have the same powers of dealing with contempt of the Board or in respect of any proceedings before the Board as if the Board were a High Court referred to in article 214 of the Constitution of India.

THE SCHEDULE.

[Enactments repealed.]

Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

¹ See foot-note 4 on page 381, *ante*.

² The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

³ Ben. Regn. III of 1822 and Act XLIV of 1850, were repealed by the Schedule to this Act, and the Schedule was repealed by sec. 8 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴ This new sec. 7 was inserted by sec. 2 of the Bengal Board of Revenue (Amendment) Act, 1958 (West Ben. Act XXVII of 1958).

⁵ Original sec. 7 was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). See foot-note 3 above.

Bengal Act III of 1913

THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.

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of 1913.]

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Bengal Act III of 1913

THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.¹

REPEALED IN PART	..	{ Ben. Act I of 1939. Ben. Act XVI of 1946.
		{ Ben. Act I of 1918. Ben. Act III of 1934. Ben. Act V of 1938. Ben. Act III of 1939. Ben. Act III of 1940. Ben. Act I of 1942.
AMENDED	..	{ West Ben. Act VIII of 1947. West Ben. Act XIII of 1953. West Ben. Act XVIII of 1953. West Ben. Act XV of 1955. West Ben. Act XV of 1957. West Ben. Act XIX of 1960. West Ben. Act III of 1962.
ADAPTED	..	{ The Government of India (Adaptation of Indian Laws) Order, 1937. The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

(The 30th April, 1913.)

An Act to consolidate and amend the law relating to the recovery of public demands in Bengal.

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bengal ;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* the *Calcutta Gazette* of 1913, Pt. IV, pages 40, 41 ; for Report of Select Committee, *see* *ibid.*, Pt. IV, pages 69 to 72 ; for proceedings in Council, *see* *ibid.*, Pt. IVA, pages 14, 15, 26, 899, 428 to 446.

LOCAL EXTENT.—This Act extends to the whole of West Bengal, *see* *sec.* 1(3).

(Part I.—Preliminary.—Sections 1—3.)

PART I.

Preliminary.

Short title,
commence-
ment and
extent.

1. (1) This Act may be called the Bengal Public Demands Recovery Act, 1913 ;

(2) It shall come into force on such date¹ as the ²[State Government] may appoint by notification in the ³[Official Gazette] ; and

(3) It extends to the whole of ⁴[West Bengal].

2. [Repeal.]—*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)*

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

⁵(a1) “Calcutta” means the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta ;

(1) “certificate-debtor” means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the Certificate Officer ;

(2) “certificate-holder” means the ⁶[Government or person] in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate-officer ;

¹i. e., the 1st July 1913, see notification No. 985T.R., dated the 22nd May, 1913, published in the *Calcutta Gazette* of 1913, Part I, page 789.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the words “Calcutta Gazette” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws Order, 1937.

⁴These words were substituted for the word “Bengal” by Article 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁵Clause (a1) was inserted with retrospective effect by sec. 2(i) of the Bengal Public Demands Recovery (Amendment) Act, 1962 (West Ben. Act III of 1962).

⁶These words were substituted for the words “Secretary of State for India in Council or other person” by paragraph 8 of, and Schedule IV to the Government of India (Adaptation of Indian Laws)-Order, 1937.

of 1913.]

(Part II.—Filing, service and effect of certificates, and hearing of objections thereto.—Sections 4, 5.)

(3) "Certificate-officer" means a Collector, a Subdivisional Officer, and any officer, appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate-officer under this Act ;

¹(3a) "Collector" means the chief officer in charge of the revenue administration of a district and includes an Additional District Magistrate appointed under subsection (2) of section 10 of the Code of Criminal Procedure, 1898 ;

²*Explanation.*—For the purposes of this Act, the district of 24-Parganas shall be deemed to include Calcutta ;

(4) "movable property" includes growing crops ;

(5) "prescribed" means prescribed by rules ;

(6) "public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II ; and

(7) "rules" means rules and forms contained in Schedule II or made under section 39.

PART II.

Filing, service and effect of certificates, and hearing of objections thereto.

4. When the Certificate-officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due, and shall cause the certificate to be filed in his office.

Filing of certificate for public demand payable to Collector.

5. (1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form :

Requisition for certificate in other (

³Provided that no action shall be taken under this Act on a requisition made by a land mortgage bank registered or deemed to be registered under the Bengal Co-operative Societies Act, 1940, or an assignee of such bank, unless the requisition be countersigned by the Registrar of Co-operative Societies, West Bengal.

Ben. Act
XXI of
1940.

¹Clause (3a) was inserted by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1953 (West Ben. Act XIII of 1953).

²This *Explanation* was added with retrospective effect by sec. 2 (ii) of the Bengal Public Demands Recovery (Amendment) Act, 1962 (West Bengal Act III of 1962).

³This proviso was substituted for the former proviso by sec. 2 of the Bengal Public Demands Recovery (West Bengal Amendment) Act, 1947 (West Ben. Act VIII of 1947).

(Part II.—Filing, service and effect of certificates, and hearing of objections thereto.—Sections 6—10.)

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with the fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint, for the recovery of a sum of money equal to that stated in the requisition as being due.

VII of
1870.Filing of
certificate
on requisition.

6. On receipt of any such requisition, the Certificate-officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office.

Service of
notice and
copy of
certificate
on certificate-debtor.

7. When a certificate has been filed in the office of a Certificate-officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

Effect of
service of
notice of
certificate.

8. From and after the service of notice of any certificate under section 7 upon a certificate-debtor,—

(a) any private transfer or delivery of any of his immovable property situated in the district in which the certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate-debtor, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

Filing of
petition
denying
liability.

9. (1) The certificate-debtor may, within thirty days from the service of the notice required by section 7, or, where the notice has not been duly served, then within thirty days from the execution of any process for enforcing the certificate, present to the Certificate-officer in whose office the certificate is filed, or to the Certificate-officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

(2) If any such petition is presented to a Certificate-officer other than the Certificate-officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

Hearing
and
determining
of
such
petition.

10. The Certificate officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary), and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly:

of 1913.]

(Part III.—Execution of Certificates.—Sections 11—13.)

Provided that, if the Certificate-officer is not the Collector, and considers that the petition involves a *bona fide* claim of right to property, he shall refer the petition to the Collector for orders; and the Collector, if he is satisfied that a *bona fide* claim of right to property is involved, shall make an order cancelling the certificate.

PART III.

Execution of Certificates.

11. A certificate filed under section 4 or section 6 may be executed by—

Who may execute certificate.

- (a) the Certificate-officer in whose office the original certificate is filed, or
- (b) the Certificate-officer to whom a copy of the certificate is sent for execution under section 12, sub-section (1).

12 (1) A Certificate-officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate-officer * * *

Transmission of certificate to another Certificate-officer for execution.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of section 8 with respect to certificates filed in the office of a Certificate-officer shall apply as if such copy were an original certificate :

Provided that it shall not be necessary to serve a second notice and copy under section 7.

13. No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by section 7, or, when a petition has been duly filed under section 9, until such petition has been heard and determined :

When certificate may be executed.

Provided that, if the Certificate-officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a Civil Court, and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property :

^aProvided further that if the certificate-debtor whose movable property has been so attached furnishes security to the satisfaction of the Certificate-officer, such attachment shall be cancelled from the date on which such security is accepted by the Certificate-officer.

^aThe words "in the same district or to the Collector of any other district" were omitted by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1934 (Ben. Act III of 1934).

^aThis proviso was added by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942),

[Ben. Act III]

(Part III.—Execution of Certificates.—Sections 14—16.)

Modes of execution.

14. Subject to such conditions and limitations as may be prescribed, a Certificate-officer may order execution of a certificate—

- (a) by attachment and sale, or by sale (without previous attachment), of any property, or
- (b) by attachment of any decree, or
- (c) by arresting the certificate-debtor and detaining him in the civil prison, or
- (d) by any two or all of the methods mentioned in clauses (a), (b) and (c).

*Explanation to clause (d).—*The Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

Certain sales by whom to be held.

15. Where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either—

- (a) by the Certificate-officer exercising jurisdiction in the district to the revenue-roll of which the estate or share appertains, or
- (b) by the Certificate-officer exercising jurisdiction in the district in which such estate or share is situated.

Interest, costs and charges recoverable.

16. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act—

- (a) interest ¹[calculated in such manner as may be prescribed] upon the public demand to which the certificate relates, at the rate of six and a quarter *per centum per annum* from the date of the signing of the certificate up to the date of realization :

²Provided that—

- (i) no interest shall be charged if the amount of public demand is less than twenty-five rupees or if the period from the date of signing the certificate up to the date of realization does not exceed three months ;
- (ii) no interest shall be charged for the period during which the execution proceedings are stayed under an order passed by the Certificate-officer at the instance of the certificate-holder ; and
- (iii) no interest shall be charged for the period during which the execution proceedings are stayed under an order passed in an appeal or in revision or by a Court at the instance of the certificate-holder or any person other than the certificate-debtor,
- (b) such costs as are directed to be paid under section 45, and
- (c) all charges incurred in respect of—
 - (i) the service of notice under section 7, and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the demand.

¹These words were inserted by sec. 2(1) of the Bengal Public Demands Recovery (Amendment) Act, 1955 (West Ben. Act XV of 1955).

²This proviso was originally added by sec. 2(2), *ibid.* and thereafter this proviso was substituted by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1960 (West Bengal Act XIX of 1960).

of 1913.]

(Part III.—Execution of Certificates.—Sections 17—20.)

Attachment.

Act V of
1908.

17. Property liable to attachment and sale in execution of a decree of a Civil Court ¹[under section 60 of the Code of Civil Procedure, 1908] may be attached and sold in execution of a certificate under this Act. Attach-
ment of
property.

18. Where an attachment has been made in execution of a certificate, any payment to the certificate-debtor of any debt, dividend or other moneys, contrary to such attachment, shall be void as against all claims enforceable under the attachment. Payment
of moneys
contrary
to attach-
ment to
be void.

19. (1) The attachment of a Civil Court decree for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until— Attach-
ment of
decree.

(i) the Certificate-officer cancels the notice, or

(ii) the certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (ii) of sub-section (1), it shall, on the application of the certificate-holder or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Sale.

20. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of the sale, even though the property itself be specified. Purchaser's
title.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

VIII of
1885.

(3) Notwithstanding anything contained in sub-section (1), in areas in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the tenure or holding shall, subject to the provisions of section 22 of that Act, pass to the purchaser, subject to the interests defined in that Chapter as "protected interests," but with power to annul the interests defined in that Chapter as "incumbrances":

¹These words and figures were inserted by sec. 8 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).

(Part III.—Execution of Certificates.—Sections 21, 22.)

Provided as follows :—

(i) a registered and notified incumbrance within the meaning of that Chapter shall not be so annulled except in the case prescribed ; and

(ii) the power to annul shall be exercisable only in the manner prescribed.

(4) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-section (3) shall not apply.

Suit
against
purchaser
not main-
tainable
on ground
of pur-
chase being
made on
behalf of
plaintiff.

21. (1) No suit shall be maintained, against any person claiming title under a purchase certified by the Certificate-officer in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Setting aside sale.

Applica-
tion to
set aside
sale of
immov-
able pro-
perty on
deposit.

22. (1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Certificate-officer to set aside the sale, on his depositing—

- (a) for payment to the certificate-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of ¹[six and a quarter] *per centum per annum*, calculated from the date of the ²[proclamation of sale] to the date when the deposit is made ;
- (b) for payment to the purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee ; and
- (c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to the ³[Government] under any law for the time being in force as the Collector certifies to be payable by the certificate-debtor.

¹These words were substituted for the words "twelve and a half" by sec. 2 of, and the Sch. to, the Bengal Rates of Interest Act, 1939 (Ben. Act III of 1939.)

²These words were substituted for the word "certificate" by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1939 (Ben. Act III of 1940).

³The word "Crown" was originally substituted for the word "Government" by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1913.]

(Part III.—Execution of Certificates.—Sections 23—25.)

(2) Where a person makes an application under section 23 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this section.

23. (1) Where immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that notice was not served under section 7 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale :

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Certificate-officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity ; and,

(b) an application made by a certificate-debtor under this section shall be disallowed unless the applicant either deposits the amount recoverable from him in execution of the certificate or satisfies the Certificate-officer that he is not liable to pay such amount.

(2) Notwithstanding anything contained in sub-section (1), the Certificate-officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

24. The purchaser at any sale of immovable property in execution of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale.

Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.

25. (1) Where no application is made under section 22, section 23 or section 24, or where such an application is made and disallowed, the Certificate-officer shall make an order confirming the sale, and thereupon the sale shall become absolute.

Sale when to become absolute or be set aside.

(2) Where such an application is made and allowed, and where, in the case of an application under section 22, the deposit required by that section is made within thirty days from the date of the sale, the Certificate-officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

The Bengal Public Demands Recovery Act, 1913.

[Ben. Act III]

(Part III.—Execution of Certificates.—Sections 26—29.)

Disposal of proceeds of execution.

Disposal
of pro-
ceeds of
execution.

26. (1) Whenever assets are realized, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner :—

- (a) there shall first be paid to the certificate-holder the costs incurred by him ;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certificate in execution of which the assets were realized ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder therefrom any other amount recoverable under the procedure provided by this Act which may be due to him upon the date upon which the assets were realized ; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the certificate-debtor.

(2) If the certificate-debtor disputes any claim made by the certificate-holder to receive any amount referred to in clause (c), the Certificate-officer shall determine the dispute.

Resistance to purchaser after sale.

Applica-
tion by
purchaser
resisted or
obstructed
in obtain-
ing posses-
sion of
immovable
property.
Procedure
on such
applica-
tion.

27. (1) If the purchaser of any immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may apply to the Certificate-officer.

(2) The Certificate-officer shall fix a day for investigating the matter, and shall summon the party against whom the application is made to appear and answer the same.

28. (1) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf, he shall direct that the applicant be put into possession of the property ; and, if the applicant is still resisted or obstructed in obtaining possession, the Certificate-officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days.

(2) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned by any person (other than the certificate-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the certificate-debtor, the Certificate-officer shall make an order dismissing the application.

Arrest, Detention and Release.

Power to
arrest and
detention.

¹29. (1) No order for the arrest and detention in civil prison of a certificate-debtor in execution of a certificate shall be made

¹Section 29 was substituted for the original section by sec. 4 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).

of 1913.]

(Part III.—Execution of Certificates.—Section 29.)

unless ¹[the Certificate-officer has issued and served a notice upon the certificate-debtor calling upon him to appear before him on a day to be specified in the notice and to show cause why he should not be committed to civil prison, and unless] the Certificate-officer, for reasons recorded in writing, is satisfied,—

(a) that the certificate-debtor, with the object or effect of obstructing or delaying the execution of the certificate,—

* * * * *

(ii) has, after the filing of the certificate in the office of Certificate-officer, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the certificate-debtor has or has had since the date of the filing of the certificate, the means to pay the amount for which the certificate has been issued, or some substantial part of such amount and refuses or neglects or has refused or neglected to pay the same.

Explanation.—In the calculation of the means of the certificate-debtor for the purpose of this clause there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the certificate.

²(1a) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the certificate-debtor may be issued by the Certificate-officer if the Certificate-officer is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the certificate, the certificate-debtor is likely to abscond or leave the local limits of the jurisdiction of the Certificate-officer.

³(1b) Where appearance is not made in obedience to a notice, issued and served under sub-section (1), the Certificate-officer may issue a warrant for the arrest of the certificate-debtor.

⁴(1c) Every person arrested in pursuance of a warrant of arrest issued under sub-section (1a) or sub-section (1b), shall be brought before the Certificate-officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for journey) :

Provided that, if the certificate-debtor pays the amount entered in the warrant of arrest as due under the certificate, and the cost of the arrest, to the officer arresting him, such officer shall at once release him.

¹These words were substituted for the words "after giving the certificate-debtor an opportunity of showing cause why he should not be committed to civil prison," by sec. 3 (a) (i) of the Bengal Public Demands Recovery (Amendment) Act, 1953 (West Ben. Act XIII of 1953).

²Sub-clause (i) was omitted by sec. 3(a)(ii) of the Bengal Public Demands Recovery (Amendment) Act, 1953 (West Ben. Act XIII of 1953):

³Sub-sections (1a), (1b) and (1c) were inserted by sec. 3(b), *ibid.*

(Part III.—Execution of Certificates.—Section 30.)

(2) When a certificate-debtor appears before the Certificate-officer in obedience to a notice to show cause ¹[or is brought before the Certificate-officer under sub-section (1c)], the Certificate-officer shall proceed to hear the certificate-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the certificate-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(3) Pending the conclusion of the inquiry under sub-section (2), the Certificate-officer may, in his discretion, order the certificate-debtor to be detained in the custody of such officer as the Certificate-officer may think fit or release him on his furnishing security to the satisfaction of the Certificate-officer for his appearance when required.

(4) Upon the conclusion of the inquiry ²[under sub-section (2)], the Certificate-officer may subject to the provision of section 31 make an order for the detention of the certificate-debtor in the civil prison and shall in that event cause him to be arrested ³[if he is not already under arrest] :

Provided that in order to give the certificate-debtor an opportunity of satisfying the certificate debt, the Certificate-officer may before making the order of detention leave the certificate-debtor in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Certificate-officer for his appearance at the expiration of the specified period if the certificate debt be not sooner satisfied.

⁴(5) When the Certificate-officer does not make an order of detention under sub-section (4), he shall, if the certificate-debtor is under arrest, direct his release.

Release
from arrest
and re-
arrest.

30. (1) The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate-officer and that he has not committed any act of bad faith.

(2) If the Certificate-officer has ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue, he may order the re-arrest of the certificate-debtor in the civil prison shall not in the aggregate exceed that authorised by section 31, sub-section (1).

¹These words were inserted by sec. 8(c) of the Bengal Public Demands Recovery (Amendment) Act, 1958 (West Ben. Act XIII of 1958).

²These words were substituted for the words "under sub-section (3)" by sec. 8(d)(i), *ibid*.

³These words were added by sec. 8(d)(ii), *ibid*.

⁴Sub-section (5) was added by sec. 8(e), *ibid*.

of 1913.]

(Part III.—Execution of Certificates.—Sections 31—33.)

31. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

Detention in, and release from, prison.

- (a) where the certificate is for a demand of an amount exceeding fifty rupees—for a period of six months, and
- (b) in any other case—for a period of six weeks :
Provided that he shall be released from such detention—
 - (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
 - (ii) on the certificate being otherwise fully satisfied, or cancelled, or
 - (iii) on the request of the person (if any) on whose requisition the certificate was filed, or of the Collector, or
 - (iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate-officer :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate-officer.

(2) A certificate-debtor released from detention under this section shall not, merely by reason of his release, be discharged from his debt ; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

32. (1) At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate-officer may cancel it on the ground of his serious illness.

Release on ground of illness.

(2) Where a certificate-debtor has been arrested, the Certificate-officer may release him if, in the opinion of the Certificate-officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a certificate-debtor has been committed to the civil prison, he may be released therefrom—

- (a) by the Collector, on the ground of the existence of any infectious or contagious disease, or
- (b) by the Certificate-officer, or the Collector, on the ground of his suffering from any serious illness.

(4) A Certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 31, sub-section (1).

33. Notwithstanding anything in this Act, the Certificate-officer shall not order the arrest or detention in the civil prison of—

Prohibition of arrest or detention of women and persons under disability.

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

(Part IV.—Reference to Civil Court.—Sections 34, 35.)

PART IV.

Reference to Civil Court.

Suit in Civil Court to have certificate cancelled or modified.

34. The certificate debtor may, at any time within six months—

- (1) from the service upon him of the notice required by section 7, or
- (2) if he files, in accordance with section 9, a petition denying liability—from the date of the determination of the petition, or
- (3) if he appeals, in accordance with section 51, from an order passed under section 10—from the date of the decision of such appeal,

bring a suit in the Civil Court to have the certificate cancelled or modified, and for any further consequential relief to which he may be entitled :

Provided that no such suit shall be entertained—

- (a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9, a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or
- (b) in the case of a certificate for a demand mentioned in Article I or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate-officer—
 - (i) within thirty days from the service of the notice required by section 7, or
 - (ii) if he has filed, in accordance with section 9, a petition denying liability—then within thirty days from the date of the determination of the petition, or
 - (iii) if he has appealed in accordance with section 51—then within thirty days from the decision of the appeal :

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow ¹[not exceeding six and a quarter *per centum per annum*.]

Grounds for cancellation or modification of certificate by Civil Court.

35. (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely :—

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate ;

¹These words were added by sec. 5 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).

of 1913.]

(Part IV.—Reference to Civil Court.—Sections 36, 37.)

(b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder ; or

(c) that in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds, namely :—

(i) that a portion of the alleged debt was not due ; or

(ii) that the certificate-debtor has not received credit for any portion which he has paid.

(3) Nothing contained in this section shall interfere with the ordinary original jurisdiction of ¹[the High Court at Calcutta], or with the jurisdiction of the Calcutta Court of Small Causes.

36. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served ; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served, and that the plaintiff has sustained substantial injury by reason of irregularity :

Suit to recover possession of, or to set aside sale of, immovable property, where notice of certificate not served.

Provided that no such suit shall be entertained—

(a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or

(b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate-officer under section 22 or section 23 to set aside the sale.

37. Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine :

General bar to jurisdiction of Civil Courts, save where fraud alleged.

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

¹These words were substituted for the words "the High Court at Fort William in Bengal" by paragraph 8 of, and Sch. Eleven to, the Adaptation of Laws Order, 1950.

(Part V.—Rules.—Sections 38, 39.)

PART V.

Rules.

Effect of
rules in
Schedule
II.

Power of
Board of
Revenue
to make
rules as to
procedure.

38. The rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this part.

39. (1) The Board of Revenue may, after previous publication and with the previous sanction of the ¹[State Government], make rules regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act; and may, by such rules, alter, add to or annul any of the rules in Schedule II.

(2) Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, and without prejudice to the generality of the power conferred by subsection (1), provide for all or any of the following matters, namely:—

- (a) the signature and verification of requisitions made under section 5;
- (b) the Certificate-officers to whom such requisitions should be addressed;
- (c) the cases in which such requisitions shall not be chargeable with a fee;
- (d) the service of notices issued under section 7, the service of other notices or processes issued under this Act, and the manner in which service may be proved;
- (e) the signing and verification of petitions, under section 9, denying liability;
- ²(f) the transfer of certificates, proceedings in execution of certificates and petitions under section 9 denying liability from one Certificate-officer to another for disposal;
- ³(ff) the manner of calculating interest referred to in section 16, clause (a);
- (g) the scale of charges to be recovered under section 16, clause (c);
- (h) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale;
- (i) the registers, books and accounts to be kept by Certificate-officers, and the inspection thereof by the public;
- (j) the fee to be charged for the inspection of the register of certificates maintained under rule 59 in Schedule II;

¹ See foot-note 2 on page 890, *ante*.

² Clause (f) was substituted for the original clause by sec. 8 of the Bengal Public Demands Recovery (Amendment) Act, 1960 (West Ben. Act XIX of 1960).

³ Clause (ff) was inserted by sec. 8 of the Bengal Public Demands Recovery (Amendment) Act, 1955 (West Ben. Act XV of 1955).

of 1913.]

(Part V.—Rules.—Section 40.—Part VI.—Supplemental Provisions.—Sections 41—45.)

(k) the recovery of expenditure on the certificate establishment by the levy of costs under section 16, clause (b) and section 45 ;

(l) the recovery of poundage fees ;

(m) the forms to be used under this Act.

40. (1) Rules made and sanctioned under section 39 shall be published in the ¹[Official Gazette], and shall, from the date of publication or from such other date as may be specified, have the same force and effect as if they had been contained in Schedule II.

Publication and effect of rules made under section 39.

(2) All references in this Act to the said Schedule II shall be construed as referring to the Schedule as for the time being amended by such rules.

PART VI.

Supplemental Provisions.

41. Where the Certificate-officer is satisfied that the certificate-debtor is a minor or of unsound mind, he shall, in any proceeding under this Act, permit him to be represented by any suitable person.

Persons under disability.

42. No certificate shall cease to be in force by reason of—

(a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the Revenue-authorities ; or

Continuance of certificates.

(b) the death of the certificate-holder.

43. Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate-officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative ; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 7 :

Procedure on death of certificate-debtor.

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and, for the purpose of ascertaining such liability, the Certificate-officer executing the certificate may, of his own motion or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate-officer thinks fit.

44. (1) The Certificate-officer shall cancel any certificate at the request of the certificate-holder.

Cancellation of certificates.

(2) The Certificate-officer may cancel any certificate filed under section 6 if the certificate-holder is not reasonably diligent.

45. Subject to such limitation as may be prescribed, the award of and cost of and incidental to any proceeding under

Costs.

¹ See foot-note 3 on page 390, ante.

[Ben. Act III]

(Part VI.—Supplemental Provisions.—Sections 46—49.)

this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

Compensation.

46. If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit ;

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

Entry into dwelling-house.

47. (1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorizing the attachment of movable property, shall enter any dwelling-house after sunset or before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless the dwelling-house or a portion thereof is in the occupancy of the certificate-debtor and he or any other occupant of the house refuses or in any way prevents access thereto ; but, when the person executing any such warrant or other process has duly gained access to any dwelling-house, he may break open the door of any room and enter, if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process ; and, if the process be for the attachment of property, he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

Application of Act XVIII of 1850.

48. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, and every [officer of the Government] making a requisition under section 5, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers' Protection Act, 1850.

XVIII of 1850.

Officers to have powers of Civil Court for certain purposes.

49. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

"The words "Officer of the Crown" were originally substituted for the words "Government Officer" by paragraph 3 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1913.]

(Part VI.—Supplemental Provisions.—Sections 50—53.)

50. All Certificate-officers (not being Collectors), Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and Control of the Collector.

Control
over
officers.

51. (1) An appeal from any original order made under this Act shall lie—

Appeal.

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate-officer not being the Collector,—to the Collector, or

(b) if the order was made by the Collector,—to the Commissioner :

Provided that no appeal shall lie from any order made under section 22.

(2) Every such appeal must be presented, in case (a), within fifteen days, or, in case (b), within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorize—

(i) any Subdivisional Officer, or

(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate-officer,

to exercise the appellate powers of the Collector under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

52. No appeal shall lie from any order of a Collector, or an officer authorized under section 51, sub-section (3), when passed on appeal.

Bar to
second
appeals.

53. ¹[(1)] The Collector may revise any order passed by a Certificate-officer, Assistant Collector or Deputy Collector under this Act ;

Revision.

the Commissioner may revise any order passed by a Collector under this Act ;

and the Board of Revenue may revise any order passed by a Commissioner under this Act.

¹[(2) The period of limitation for an application for revision under this section shall be thirty days from the date of the order revision whereof is applied for, excluding the time occupied in obtaining a copy of the order :

Provided that such an application for revision may be admitted after the period aforesaid if the applicant satisfies the Collector, the Commissioner or the Board, as the case may be, that he had sufficient cause for not making the application within the period.]

¹Section 53 was renumbered as sub-section (1) of that section and after that section as so re-numbered, sub-section (2) was added by sec. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1957 (West Ben. Act XV of 1957).

[Ben. Act III

(Part VI.—Supplemental Provisions.—Sections 54—64.)

Review.

54. Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of mistake or error either in the making of the certificate or in the course of any proceeding under this Act.

Saving of other Acts.

55. The powers given by this Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act now in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable; and, except where expressly so provided, no legal remedy shall be affected by this Act.

Application of the Indian Limitation Act, 1908.

56. (1) Sections 6 to 9 of the Indian Limitation Act, 1908, shall not apply to suits, appeals or applications under this Act. IX of 1908.

(2) Except as declared in sub-section (1), the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court.

Certificate officer deemed to be a Court.

57. A Certificate-officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of section 14 of the Indian Limitation Act, 1908.

Penalties.

58. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code.

Act XLV of 1860,

Signature of documents by ministerial officers.

59. (1) Any Certificate-officer may, by written order, authorise any ministerial officer to sign, on behalf of the Certificate-officer, any copy, issued by the Certificate-officer under this Act, of any document referred to therein.

(2) The ¹[State Government] may, by notification in the ²[Official Gazette], empower Certificate-officers to authorize ministerial officers, by written order, to sign on behalf of Certificate-officers any classes of original notices, summonses or proclamations issued by Certificate-officers under this Act which are specified in such notification.

60, 61, 63 and 64.—[Rep. by sec. 6 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).]

62.—[Rep. by sec. 3 and the Second Schedule of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]

¹ See foot-note 2 on page 390, ante.

² See foot-note 3 on page 390, ante.

of 1913.]

(Schedule I.—Public Demands.—Articles 1—8.)

SCHEDULE 1.

Public Demands.

[See sections 3 (6) and 34 (b).]

1. Any arrear of revenue which remains due in the following circumstances, namely :—

XI of 1859.
Ben. Act
VII of
1868.

when under the provisions of the Bengal Land-revenue Sales Act, 1859, or the Bengal Land-revenue Sales Act, 1868, or any other law for the time being in force, an estate or tenure, or any share of an estate or tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may, under the said provisions, be applied.

2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the said Bengal Land-revenue Sales Act 1859.

3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

4. Any money which is declared by any enactment for the time being in force—

(i) to be a demand or a public demand, or

(ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand, or

(iii) to be recoverable under the Bengal Land-revenue Sales Act, 1868.

5. Any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him.

6. Any money awarded as fees or costs by a Revenue-authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other thing.

8. In the case of property which, under the provisions of any law for the time being in force, is under the charge of, or is managed by, the Court of Wards or the Revenue-authorities on

¹In trust estates managed by Government, as express trustee, and in attached estates managed by Revenue authorities on behalf of private individuals, arrears of rent are recoverable under Article 8. The Act does not apply to rents of houses and shops, and the certificate procedure cannot be applied to the recovery of such rent unless, by a written instrument duly registered, the persons liable to pay such rents have agreed that they shall be recoverable as public demand.

(Schedule I.—Public Demands.—Articles 9—12 B.)

behalf of a private individual—any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due before or after the management.

~ Page 410—

In Schedule I, for article 9, substitute the following article, namely:—

“9. Any money payable to an officer of the Government, in respect of which the person liable to pay the same has, by a written instrument, which shall, except in cases of fees, not exceeding fifty rupees per annum, for licenses granted for use and occupation of agricultural land vested in the Government under the West Bengal Estates Acquisition Act, 1953, be duly registered, agreed that such money shall be recoverable as a public demand.”

West
Act
1954.

10. Any stamp duty payable by a proprietor in respect of a paper of partition prepared under the Estates Partition Act, 1897.

Ben. Act V
of 1897.

11. In the case of a person to whom the collection of tolls has been farmed under section 8 of the Canals Act, 1864, or of the sureties of such person—any money due in respect of such farm.

Ben. Act V
of 1864.

12. Any money awarded as compensation under section 2 of the Bengal Land-revenue Sales Act, 1868.

Ben. Act
VII of
1868.

*12A. Any sum ordered by a liquidator appointed under sub-section (1) of section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a society or as the cost of liquidation.

II of 1912.

*12B. Any sum due to a land mortgage bank registered under the Co-operative Societies Act, 1912, or any sum due to an assignee of such bank in respect of any principal sum or any interest thereon under a mortgage made to the bank.

*The words “an officer of the Crown” were originally substituted for the words “a Government Officer” by paragraph 8 of and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “Government” was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

*The words “or any local authority” were omitted by sec. 7(a) of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).

*Article 9A was substituted for the former Article. 9A by sec. 2(a) of the Bengal Public Demands Recovery (Second Amendment) Act, 1958 (West Ben. Act XVIII of 1958).

*Article 12A was inserted by sec. 8 of the Bengal Public Demands Recovery (Amendment) Act, 1918 (Ben. Act I of 1918).

*Article 12B was inserted by sec. 8 of the Bengal Public Demands Recovery (Amendment) Act, 1938 (Ben. Act V of 1938).

of 1913.]

-(Schedule I.—Public Demands.—Articles 13—16.
Schedule II.—Rules.—Rules 1—1B.)

13. Any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not.

¹14. Any money payable to a local authority ** * *

²15. Any money awarded as costs by the High Court at Calcutta in proceedings under article 226 of the Constitution of India relating to matters arising outside its ordinary original civil jurisdiction.

³16. Any money fixed as water rate by the State Government under sub-section (2) of section 14 of the Damodar Valley Corporation Act, 1948.

XIV of
1948.

*SCHEDULE II.

Rules.

(See section 38.)

Signature and Verification of Requisitions for Certificates.

1. (1) Every requisition made under section 5 shall be signed and verified at the foot by the person making it.

(2) The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the person making it, and shall state the date on which it is signed.

¹1A.—The procedure and the rules to be followed in respect of certificates for arrears of sales tax shall be the same as those in the case of arrears of land revenue payable to the Collector.

²1B.—All the columns of Form No. I (Certificate of Public Demand) shall be filled up clearly in ink before the same is filed in the office of the Certificate Officer, and subsequent corrections, if any, made therein shall be made in red ink, and initialled by the Certificate Officer with dates.

Signature
and veri-
fication of
requisition
for
certificate,

¹Article 14 was added by sec. 7(b) of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942).

²The words "namely, the commissioners of a municipality or a district board" were omitted, by sec 2(b) of the Bengal Public Demands Recovery (Second Amendment) Act, 1953 (West Ben. Act XVIII of 1953).

³Articles 15 and 16 were added by sec. 4 of the Bengal Public Demands Recovery (Amendment) Act, 1955 (West Ben. Act XV of 1955).

⁴This Schedule II has been substituted for the original Schedule II by the Board of Revenue Notification No. 8949 C.P., dated the 21st December, 1914, published in the *Calcutta Gazette*, dated the 23rd *idem*, Pt. I, page 2351. Section 39, read with sec. 40 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), authorises the Board of Revenue to alter, to add to or to annul by notification, any of the rules including the forms thereunder, in Schedule II to this Act. The Schedule has been amended in accordance with the several notifications and orders which have been issued under these powers.

⁵Rule 1A was inserted by notification No. 9831 C.P., dated the 18th September, 1954, published in the *Calcutta Gazette* of 1954, Part I, page 3174.

⁶Rule 1B was inserted by notification No. 14998 O.P., dated the 30th August, 1957, published in the *Calcutta Gazette* of 1957, Part I, page 3347.

[Ben. Act III]**(Schedule II.—Rules.—Rules 2- -7.)****Service of Notices.****Mode of service.**

2. Service of a notice issued under section 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Certificate-officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate-officer.

Note.—It has been laid down by the Calcutta High Court in the case reported in LVIII-C. W. N., pages 573-586, that omission to sign the Notice under section 7 of the Public Demands Recovery Act, 1913, by the Certificate Officer or by one authorised by him or the use of rubber-stamp or lithographic signatures thereon renders the notice invalid.

(*Vide* Board's 'D' Group, C. P. Branch file No. 23 of 1954.)

Service on certificate-debtor or his agent.

3. Wherever it is practicable, service shall be made on the certificate-debtor in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on adult male member of certificate-debtor's family.

4. Where the certificate-debtor cannot be found, and has no agent empowered to accept service of the notice on his behalf, service may be made on any adult male member of the family of the certificate-debtor who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment.

5. Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

Procedure where certificate debtor refuses to accept service or cannot be found.

6. Where the certificate-debtor or his agent, or such other person as aforesaid, refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-debtor, and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall—

(a) affix a copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries on business or personally works for gain, or

(b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate-officer and also on some conspicuous part of the land,

and shall then return the original to the Certificate-officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

Endorsement of time and manner of service.

7. The serving officer shall, in all cases in which the notice has been served under rule 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice.

of 1913.]

(Schedule II.—Rules.—Rules 8—12.)

8. Where a notice is returned under rule 6, the Certificate-officer shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate-officer, or, subject to any general order of the Collector, by an Assistant Collector, Deputy Collector or Sub-Deputy Collector, touching his proceedings and may make such further inquiry in the matter as he thinks fit ; and shall either declare that the notice has been duly served or order such service as he thinks fit.

Examina-
tion of
serving
officer.

9. Notwithstanding anything hereinbefore contained, the notice may, if the Certificate-officer so directs, be served by post.

Service
by post.

Petitions under Section 9, Denying Liability.

10. (1) Every petition filed under section 9, denying liability, shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate-officer to be acquainted with the facts of the case.

Signature
and
verifica-
tion of
petition
denying
liability.

(2) The verification shall be signed by the person making it, and shall state the date on which it is signed.

(3) The petition referred to in sub-clause (1) above shall be filed in duplicate so that one copy may be supplied to the certificate-holder.

11. (1) The Certificate-officer may, subject to any general or special order of the Collector, transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under section 9 ; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly :

Transfer
of such
petitions.

Provided that the Collector may re-transfer any petition so transferred, and order that it be heard and determined by the Certificate-officer.

(2) The provisions of section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-rule (1).

Execution of Certificates.

12. Where a copy of a certificate is sent for execution to any other Certificate-officer under section 12, sub-section (1), the certificate may be executed by him.

Execution
in another
district.

*(Schedule II.—Rules.—Rules 13—16.)***Attachment of Movable Property, etc.**

Applica-
tion for
attach-
ment of
movable
property
in the
possession
of the
certificate-
debtor.

¹³ At the time of making an application for the attachment of movable property in the possession of the certificate-debtor, the certificate-holder shall declare whether the property is above or below forty rupees in value. If the property is declared to be above forty rupees in value, the certificate-holder shall pay the costs of issuing the proclamation of sale. If, however, the value of the property, having been declared to be forty rupees or under, should be found as determined by rule 14 to exceed forty rupees, the certificate-holder shall pay the costs of issuing the proclamation of sale immediately on receipt of notice of attachment.

Procedure
for the
attachment
of movable
property
when its
value is up
to Rs. 40
or above.

¹⁴ When the attaching officer believes that the property attached does not exceed forty rupees in value, he shall inform the debtor or, in his absence, any present adult member of his family, that it will be sold by public auction at once without the issue of any proclamation. In case the certificate-holder or the certificate-debtor, or any person on his behalf, objects to this, the attaching officer shall convoke a *panchayat* of not less than three respectable adult male inhabitants of the neighbourhood, of whom ordinarily the headman of the village should be one, and shall require them to assess the value of the property. If they determine that it exceeds forty rupees in value, he shall deal with it according to the rules for the sale of movable property exceeding forty rupees in value, otherwise he shall forthwith proceed to sell it by auction after giving such reasonable notice as the circumstances of the case admit of to intending purchasers.

Attach-
ment of
movable
property
(other
than agri-
cultural
produce) in
possession
of
certificate-
debtor.

15. Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attach-
ment of
agricul-
tural
produce.

16. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(a) where such produce is growing crop—on the land on which such crop has grown, or

¹Rules 13, 14, 44, 46(1), and 48 are shown as amended by the Board of Revenue notification No. 7112 O.P., dated the 8th June, 1933, published in the "Calcutta Gazette" of 1933, Part I, dated the 15th June, 1933, page 880.

of 1913.]

(Schedule II.—Rules.—Rule 17.)

(b) where such produce has been cut or gathered—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate-officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain ;

and the produce shall thereupon be deemed to have passed into the possession of the Certificate-officer.

17. (1) Where agricultural produce is attached, the Certificate-officer shall make such arrangements for the custody thereof as he may deem sufficient, and, ¹[for the purpose of enabling the Certificate-officer to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time.]

Provision
as to agri-
cultural
produce
under
attach-
ment.

(2) Subject to such conditions as may be imposed by the Certificate-officer in this behalf, either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it ; and, if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate-officer and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate-officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

¹These words were substituted for the words "when the produce is a growing crop gathered," *vide* Board of Revenue notification No. 12971CA., dated the 20th October, 1933, published in the *Calcutta Gazette* of 1933, Part I, pages 1532-33.

(Schedule II.—Rules.—Rule 18.)

Attachment of
debt, share, and
other movable
property not in
possession of
certificate-debtor.

18. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a Corporation, or
- (c) other movable property not in the possession of the certificate-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate-officer ;
- (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the certificate-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate-officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause, (i) of sub-rule (1) may pay the amount of his debt to the Certificate-officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

¹(4) Before making under sub-rule (1) an order of attachment of rents due to the Certificate-debtor from any subordinate tenure-holders or any *raiayat* or any under-*raiayat*, the Certificate-officer may, upon the application of the certificate-holder, issue notice on the certificate-debtor calling upon him to submit a statement signed and verified in the manner specified in rule 1 containing the names of the tenants from whom rent is due to him and the amount of rent due to him from each such tenant within fifteen days from the date of receipt of the notice and the Certificate-officer shall make the order of attachment under sub-rule (1) after considering the said statement. Where the certificate-debtor in spite of such notice fails to furnish such statement within the time mentioned in this sub-rule the Certificate-officer shall issue the order of attachment under sub-rule (1) on such subordinate tenure-holders, *raiayats* or under-*raiayats* as are named in the application for an order of attachment under that sub-rule.

Sub-rule (4) was added, vide Board of Revenue Notification No. 16364 G.P., dated the 27th November, 1936, published in the *Calcutta Gazette* of 1936, Part I, page 2715.

(Schedule II.—Rules.—Rules 18A—18D.)

18A. (1) Rents due to a certificate-debtor from subordinate tenure-holders or *raiya*s or under-*raiya*s which have been attached under rule 18 may be dealt with under the eight succeeding rules.

Rules regarding realisation of rents due to certificate-debtor from the holders of subordinate interests.

(2) The word "Garnishee" in these rules means and includes such subordinate tenure-holders, *raiya*s and under-*raiya*s.

'Garni-
'shee'
Rules.

18B. (1) Upon the application of the certificate-holder, the Certificate-officer may issue a notice to the garnishee liable to pay the rent calling on him either to pay to the Certificate-officer the rent due from him to the certificate-debtor or so much thereof as may be sufficient to satisfy the certificate and costs of execution or to appear and show cause on a date to be specified in the notice why he should not do so.

Certificate-officer to issue notice to the garnishee liable to pay rent,

(2) Notwithstanding anything else in these rules notice under sub-rule (1) may be issued simultaneously with an order under rule 18(1).

(3) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the certificate-debtor.

²[This sub-rule shall not apply when the Central Government or the ³State Government is the certificate-holder.]

18C. Where the garnishee does not forthwith pay to the Certificate-officer the amount due from him to the certificate-debtor or so much thereof as is sufficient to satisfy the certificate and the costs of execution or does not appear and show cause in answer to the notice, the Certificate-officer may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a certificate against him other than one for arrears of rent.

Certificate-officer to order the garnishee to comply with the terms of notice.

18D. (1) Where the garnishee disputes liability in part only, the Certificate-officer may amend the notice in accordance with the amount admitted, and unless the amount as amended is forthwith paid to the Certificate-officer, may make an order under rule 18C.

Certificate-officer to amend notice where the garnishee disputes liability.

¹Sub-rule (4) was added, *vide* Board of Revenue notification No. 16864C. P., dated the 27th November, 1936, published in the *Calcutta Gazette* of 1936, Part I, page 2715.

²These words were added by notification No. 22238C. P., dated the 20th December, 1938, published in the *Calcutta Gazette* of 1938, Part I, page 8084.

³The word "State" was substituted for the word "Provincia" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Schedule II.—Rules.—Rules 18E—19.)

(2) Notwithstanding anything in sub-clause (1) where the garnishee disputes the liability in whole or in part and where the Certificate-officer thinks fit to make a determination as to the whole or part liability disputed by the garnishee, the Certificate-officer shall proceed to investigate the dispute, take evidence (if necessary) and determine whether the garnishee is liable for the whole or any part of the amount for which the notice was issued and may set aside, modify or vary the notice accordingly, and unless the amount of the notice so amended is paid forthwith shall make an order under rule 18C.

Rule 48 to
apply to
an order
made under
rule 18C.

18E. The provisions of rule 43 shall apply to an order made under rule 18C.

Certificate-
officer to
order a
third
person to
state the
particulars
of his
claim,
if any.

18F. Where it is suggested or appears to be probable that a third person has a claim to or other interest in the amount, the Certificate-officer may order such third person to appear and state the nature and particulars of his claim (if any) to such amount and prove the same.

Certificate-
officer to
proceed
under rule
18D in case
the third
person does
not appear.

18G. After hearing such third person and any other person or persons who may subsequently be ordered to appear, or when such third person or other person or persons do not appear when so ordered, the Certificate-officer may proceed as prescribed in rule 18D.

Payment
under
rule 18B
or rule 18C.

18H. Payment made by the garnishee on a notice under rule 18B or under an order under rule 18C shall be valid discharge to him as against the certificate-debtor and any other person ordered to appear as aforesaid for the amount paid or levied though such certificate may be set aside or reversed.

Costs.

18-I. The costs of any application made under rule 18B and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Certificate-officer.

Attach-
ment of
share in
movables.

19. Where the property to be attached consists of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the certificate-debtor prohibiting him from transferring the share or interest or charging it in any way.

of 1913.]

(Schedule II.—Rules.—Rules 20—22.)

20. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate-officer, whether the Certificate-debtor or the disbursing officer is or is not within the local limits of the Certificate-officer's jurisdiction, may order that the amount shall be withheld from such salary or allowances, either in one payment or by monthly instalments as the Certificate-officer may direct ; and, upon notice of the order to such officer as the ¹[State Government] may, by notification in the ²[*Official Gazette*], appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate-officer the amount due under the order, or the monthly instalments, as the case may be.

Attachment of salary for allowances of public officer or servant of Railway Company or Local Authority.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate-officer or to a Civil Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the ¹[State Government] in this behalf shall forthwith return the subsequent order to the Certificate-officer issuing it, with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind ³[Central Government or the State Government] or the Railway Company or Local Authority, as the case may be ; and ³[Central Government or the State Government] or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

21. Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Certificate-officer and held subject to his orders.

Attachment of negotiable instruments.

22. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate-officer by whom the notice is issued :

Attachment of property in custody of Court or public officer.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the

¹See foot-note 2 on page 390, *ante*.

²See footnote 3 on page 390, *ante*.

³The words "Central Government or the Provincial Government" were originally substituted for the words "the Government" by the Board of Revenue Notification No. 8778-C.P., dated the 24th September, 1942, published in the *Calcutta Gazette*, 1942, Part I, page 2332, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act III**(Schedule II.—Rules.—Rules 23—28.)**

certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Attach-
ment of
immov-
able
property.

23. Where the property is immovable, no attachment need be made before sale.

Removal
of attach-
ment on
satisfaction
or cancella-
tion of
certificate.

24. Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate-officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 47, sub-rule (1).

Maintenance and custody, while under attachment, of live-stock and other movable property.

Custody of
property
under
attach-
ment.

25. Under rule 15, the property seized will remain in the custody of the attaching officer or of one of his subordinates on his responsibility.

Removal
of property
to Court.

26. If no suitable place can be found in the village for the safe custody of the attached property, the attaching officer shall remove the property to the Court at the certificate-holder's expense. In the event of the certificate-holder failing to provide the necessary funds, the attachment shall be withdrawn.

List of
property
under
attach-
ment.

27. Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Certificate-officer, and with his report shall forward an accurate list of the property seized, so that the Certificate-officer may thereon at once issue the proclamation of sale.

Debtor's
consent
to the sale
of the
property
under
attach-
ment.

28. If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the prescribed term, the officer shall receive the same and forward it without delay to the Certificate-officer for orders,

of 1913.]

(Schedule II.—Rules.—Rules 29—34.)

29. When property is removed to the Court it shall be kept by the *nazir* on his own sole responsibility in such place as may be approved by the Certificate-officer. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises, or in the personal custody of the *nazir*, he may, subject to approval by the Certificate-officer, make such arrangements for its safe custody under his own supervision as may be most convenient and economical and the Certificate-officer may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

Custody of property

attachment, while in Court.

30. When property remains at the place where it is attached in the custody of the attaching officer, and any person other than the certificate-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the certificate-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Certificate-officer.

Claim of any person other than the certificate-holder to the property under attachment.

31. If the certificate-holder shall withdraw an attachment, or if it be withdrawn under rule 26 or rule 33, the attaching officer shall inform the debtor, or in his absence, an adult member of his family, that the property is at his disposal.

Withdrawal of attachment.

In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the certificate-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

32. Whenever live-stock is kept at the place where it has been attached, the certificate-debtor shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer; but the latter shall, if required by the certificate-holder, and on his paying for the same, at a rate to be fixed by the Certificate-officer, engage the services of as many persons as may be necessary for the safe custody of it.

Feeding and tending of live-stock under attachment.

33. In the event of the certificate-debtor failing to feed attached live-stock, the officer shall call upon the certificate-holder either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the certificate-holder shall fail to provide for either, the officer shall report the matter, without delay, to the Certificate-officer who may thereupon withdraw the attachment.

Cost for feeding live-stock and expenses attending its removal to Court.

34. When attached live-stock is brought to Court, the *nazir* shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

Responsibility of the *nazir* for safe custody and proper feeding.

(Schedule II.—Rules.—Rules 35—38.)

Custody
of live-
stock in
Govern-
ment
pounds.

35. If there be a Government pound in or near the place where the Court is held, the *nazir* shall be at liberty to place in it such attached live-stock as can be properly kept there in which case the pound-keeper will be responsible for the property to the *nazir*, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

Respon-
sibility of
the *nazir*
for the
custody of
live-stock.

36. If there be no pound available, or if, in the opinion of the Certificate-officer, it be inconvenient to lodge the attached live-stock in the pound, the *nazir* may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Certificate-officer. The *nazir* will in all cases remain responsible for the custody of the property.

Rates to be
allowed for
the custody
and main-
tenance of
various
descrip-
tions of
live-stock.

37. The Certificate-officer shall, from time to time, fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The Collector may make any alterations he deems fit in the rates so prescribed.

Fees to be
where
process of
attach-
ment of
movable
property
is by actual
seizure.

38. (1) Where process of attachment of movable property by actual seizure is issued, fees at the following rates shall be charged, and the officer deputed to attach such property shall be furnished with a certificate stating the period for which the fees in accordance with this rule have been paid :—

(i) When the ¹[amount or value of the subject matter of the case] exceeds Rs. 1,000—

Rs. a. p.

(a) for the seizure under the order of attachment	...	...	...	2	0	0
(b) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, <i>per diem</i>	...	...	...	0	6	0

(ii) When the ¹[amount or value of the subject matter of the case] is Rs. 1,000 or under, but above Rs. 50—

Rs. a. p.

(a) for the seizure under the order of attachment	...	...	...	1	0	0
(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, <i>per diem</i>	...	...	...	0	4	0

(iii) When the ¹[amount or value of the subject matter of the case] is Rs. 50 or under—

Rs. a. p.

(a) for the seizure under the order of attachment	...	...	...	0	8	0
(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, <i>per diem</i>	...	...	...	0	4	0

¹These words were substituted for the words "amount under certificate", vide Board of Revenue notification No. 112680. P., dated the 9th September, 1933, published in the *Calcutta Gazette* of 1933, Part I, page 1311.

of 1913.]

(Schedule II.—Rules.—Rule 38.)

Note (1).—When any process of attachment of movable property by actual seizure is issued, as a result of action taken under sections 13 and 14 of the Act, only the special fees leviable under the above rule should be charged. At this stage, the fee of annas twelve for an ordinary executive revenue process, as prescribed in rule 166(a), page 18 of the Bengal Practice and Procedure Manual, 1934, which is added to the certificate demand at the preliminary stage when notice under section 7 of the Act is issued, should not be imposed again.

Note (2).—When a process of attachment of movable property by actual seizure is re-issued after a partially or wholly unsuccessful attempt to realise certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nazarat staff.

¹*Note (3).*—The phrase “amount or value of the subject matter of the case” means the original demand as in the certificate signed under section 4 or 6 subject to any modification subsequently made under section 10.

Note (3a).—In addition to the fees leviable under the above rule, the boat hire prescribed in rule 166(c), page 18 of the Practice and Procedure Manual, 1934, should be charged.

(2) When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) referred to above must be paid in each case, and the daily fee (b) only for the men actually employed. The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Certificate-officer shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the attaching officer; but where that officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the certificate-holder shows the property to be of such small value, that the expense of keeping it in custody may probably exceed the value, the Certificate-officer shall fix the daily fee with reference to the provisions of rule 15 :

Provided that, if it appears that for any reason the number of days fixed by the Certificate-officer under this rule, and in respect of which fees have been paid, is likely to be exceeded and the certificate-holder desires to maintain the attachment, the certificate-holder shall apply to the Certificate-officer to fix such further number of days as may be necessary and the additional fees in respect thereof shall be paid in the manner provided in sub-rule (3). If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

(3) Where process of warrant of arrest is issued in certificate cases, the fees at the following rates shall be charged :—

- (i) Rupee 1 when the amount under certificate is Rs. 50 or under.
- (ii) Rupees 4 when the amount under certificate is Rs. 1,000 or under but above Rs. 50.
- (iii) Rupees 10 when the amount under certificate exceeds Rs. 1,000.

Fees for
issue of
process of
warrant of
arrest.

¹*Note (3) was added with Board of Revenue notification No. 11263 C.P., dated the 9th September, 1938, published in the Calcutta Gazette of 1938, Part I, page 1811.*

(Schedule II.—Rules.—Rules 38A—41.)

Note (4).—When a warrant of arrest is re-issued after a partially or wholly unsuccessful attempt to realise the certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nazarat staff.

Note (5).—In addition to the fees leviable under the above rule the boat hire prescribed in rule 166 (c), page 18 of the Practice and Procedure Manual, 1984, should be charged.

(4) The fees prescribed by this rule shall be payable in advance at the time of when the petition for service or execution is presented, and shall be paid by means of court-fee stamps affixed to the petition in addition to the stamps necessary for its own validity.

Refund of
custody
fees.

38A. All refund cases of custody fees will be entered in Register 8 and the Certificate-officer shall be asked to report whether the claim is admissible. If his report shows that the refund may be granted, the Collector will authorise him to issue a payment order on the back of the paper to which the court-fee stamps are affixed. The refund will be adjustable under the head "VII—Stamps—Deduct—Refunds".

Investigation of Claims and Objections.

Investiga-
tion by
Certificate-
officer.

39. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Certificate-officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Certificate-officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate-officer ordering the sale may postpone it pending the investigation of the claim or objection ¹[upon such terms as to security or otherwise, as the Court shall deem fit.]

Evidence
to be
adduced.

40. The claimant or objector must adduce evidence to show that—

- (a) (in the case of immovable property) at the date of the service of the notice under section 7, or
- (b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property attached.

Release of
property
from
attach-
ment or
sale.

41. Where, upon the said investigation, the Certificate-officer is satisfied that, for the reason stated in the claim or objection, such property was not,—

- (a) (in the case of immovable property) at the date of the service of the notice under section 7, or
- (b) (in the case of movable property) at the date of the attachment,

¹These words were added, vide Board of Revenue notification No. 12971-C. A., dated the 20th October, 1922, published in the *Gazette of India* of 1922, Part I, pages 1582-83.

of 1913.]

(Schedule II.—Rules.—Rules 42—46.)

in the possession of the certificate-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the certificate-debtor at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person,

the Certificate-officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

42. Where the Certificate-officer is satisfied that the property was, at the said date, in the possession of the certificate-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Certificate-officer shall disallow the claim.

Disallow-
ance of
claim to
property
attached.

43. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute ; but, subject to the result of such suit (if any), the order shall be conclusive.

Saving of
suits to
establish
right to
attached
property.

Note.—It has been held by the Calcutta High Court in the case of Union of India *vs.* Shri Raja Ram Shaw and others. in Civil Rules Nos. 1145 and 1146 of 1952, that the right of appeal given under section 51 of the Act cannot be taken away by any rule, such as Rule 43 which has been made under the rule-making power of a non-legislative body and that the right of suit of the claimant or the objector is not taken away whether he prefers an appeal or not. Orders passed by the Certificate-officer under Rule 41 or 42 are, therefore, appealable to higher Revenue Authorities.

(*Vide* Board's 'D' Group, C. P. Branch file No. 10 of 1955.)

Sale generally.

44. Any Certificate-officer executing a certificate may order that any property liable to sale, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

Power to
order
sale of
attached
property.

45. Sales of property under the proviso to rule 15 and of movable property not exceeding forty rupees in value, shall be held on the spot. Such sales will necessarily be conducted by peons when they are attaching officers. Sales of movable property of greater value can, under rule 46, take place only after the issue of a proclamation, but they may be held on the spot or at the *sadar* or subdivisional headquarters, as may seem convenient and conducive to the securing of good prices, provided that the place and time of sale are notified in the proclamation. For such sales officers of higher rank than peons should always be deputed when the value of the property is estimated to exceed fifty rupees and proclamation should be issued. When the value is between forty rupees and fifty rupees the Collector or Certificate-officer may, by a special order, depute a peon, if he considers it desirable to do so.

Sale of
movable
property
falling
under
rule 15 or
of value
not exceed-
ing Rs. 40
or of
greater
value.

46. (1) Where any immovable property, or any movable property exceeding forty rupees in value, is ordered to be sold by public auction, the Certificate-officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.

Proclama-
tion of sale
by public
auction.

¹ See foot-note 1 on page 414, *ante*.

[Ben. Act III]

(Schedule II.—Rules.—Rule 47.)

(2) Such proclamation shall be drawn up after notice to the certificate-debtor, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold ;
- (b) (where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate ;
- (c) the amount for the recovery of which the sale is ordered ; and
- (d) any other thing which the Certificate-officer considers it material for a purchaser to know in order to judge of the nature and value of the property.

(3) Where a tenure, or a *raiya* holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the tenure or holding will first be put up to auction subject to registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances.

VIII of
1885.

(4) Where an occupancy holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all incumbrances.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-clauses (3) and (4) shall not apply.

(6) For the purpose of ascertaining the matters to be specified in the proclamation, the Certificate-officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of
making
proclama-
tion.

47. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and ¹[also] upon a conspicuous part of the office of the Certificate-officer.

(2) Where the Certificate-officer so directs, such proclamation shall also be published in the ²[Official Gazette] or in a local newspaper, or in both ; and the cost of such publication shall be deemed to be costs of the sale.

¹This word was substituted for the word "then" by Notification No. 57450.P., dated the 15th May, 1942, published in the *Calcutta Gazette* of 1942, Part I, page 1872.

²See foot-note 8 on page 390, ante.

of 1913.]

(Schedule II.—Rules.—Rules 48, 49.)

VIII of
1885.

(2) If a tenure, a *raiya* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the proclamation shall also be published in the *Malkachari* or rent office of the estate and at the local *thana*.

(4) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate-officer, otherwise be given.

¹48. Save in the case of property of the kind described in the proviso to rule 15, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding forty rupees in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer² [or in a case of immovable property in a conspicuous part of the property whichever is later]:

Time of
sale.

Provided that if a tenure, a *raiya* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days, calculated from—

(a) the date on which a copy of the sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer, or

(b) the date on which the sale proclamation has been published in the *Malkachari* or rent office of the estate and at the local *thana*,

whichever is later.

49. (1) No holder of a certificate in execution of which property is sold shall, without the express permission of the Certificate-officer, bid for or purchase the property.

Purchase
of property
by the
certificate-
holder.

(2) Where a certificate-holder purchases with such permission, the purchase-money and the amount due on the certificate may be set off against one another, and the Certificate-officer executing the certificate shall enter up satisfaction of the certificate in whole or in part accordingly.

(3) Where a certificate-holder purchases, by himself or through another person, without such permission, the Certificate-officer may, if he thinks fit, on the application of the certificate-debtor or any other person whose interests are affected by the sale, by order

¹ See foot-note 1 on page 414, *ante*.

² These words were added, *vide* notification No. 57450.P., dated the 15th May, 1942, published in the *Calcutta Gazette* of 1942, Part I, page 1372.

[Ben. Act III**(Schedule II.—Rules.—Rules 50—53.)**

set aside the sale ; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the certificate-holder.

(4) This rule shall not apply when the certificate-holder is the ¹[Central Government or the State Government].

Adjourn-
ment or
stoppage
of sale.

50. (1) The Certificate-officer may, in his discretion, adjourn any sale hereunder to a specified day and hour ; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the office of the Certificate-officer, no such adjournment shall be made without the leave of the Certificate-officer.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than ²[one calendar month] a fresh proclamation under rule 47 shall be made unless the certificate-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate-officer who ordered the sale.

Defaulting
purchaser
answerable
for loss on
re-sale.

51. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale shall be certified to the Certificate-officer by the officer or other person holding the sale, and shall at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act :

Provided that no such application shall be entertained unless made within 15 days from the date of re-sale.

Restriction
on
bidding or
purchase
by officers.

52. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in the property sold.

Levy of
poundage
fees.

53. (1) The percentage or poundage fee on the gross amount realised by any sale under the Public Demands Recovery Act, 1913, shall be leviable on every such sale at the rate of 2 per cent. on such gross amount up to Rs. 1,000 and at the rate of 1 per cent. on all excess of gross amounts over Rs. 1,000.

Ben. Act
III of 1913.

¹The words "Central Government or the Provincial Government" were originally substituted for the words "Secretary of State for India in Council" by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter, the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "seven days," vide Board of Revenue notification No. 12971C.A., dated the 20th October, 1938, published in the *Calcutta Gazette* of 1938, Part I, pages 1532-33.

of 1913.]

(Schedule II.—Rules.—Rule 54.)

(2) The percentage or poundage fee under sub-rule (1) shall be paid in court-fee stamps by the auction-purchaser (certificate-holder or other person) as soon as his bid is accepted by the Court and the sale is completed.

(3) The percentage leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 8 annas should be levied for every Rs. 25, or part of Rs. 25; realized by the sale, up to Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 4 annas for every Rs. 25 or part thereof should be levied.

(4) In case in which several properties are sold in satisfaction of one certificate, only one poundage fee calculated on the gross sale-proceeds should be levied, 2 per cent. being charged on the gross sale-proceeds up to Rs. 1000 and 1 per cent. on such proceeds exceeding Rs. 1,000.

¹(5) The proceeds of a sale effected in execution of a certificate may be paid out of Court only on an application made for that purpose in writing.

¹(6) In cases in which the certificate-holder applies for leave to purchase under rule 49, sub-rule (1), no order to set off the purchase money against the amount of the certificate shall be made on that application. If a certificate-holder-auction-purchaser desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

²(7) When a sale of immovable property is set aside under sub-section (2) of section 25, the Certificate-officer may make an order for payment by the certificate-debtor or by the person at whose instance the sale is set aside of the poundage fee paid by the auction-purchaser (certificate-holder or other person) under sub-rule (2).

³54. Upon the hearing of the petition referred to in rule 53, sub-rule (6), the costs of execution, including the poundage fee, shall be added to the certificate; and in cases in which the amount of the purchase-money exceeds the amount of the certificate and such costs, the certificate-holder-auction-purchaser shall pay to the Certificate-officer the sum of 25 per cent. on the balance of the purchase-money after deducting the amount of the certificate and of such costs, and shall pay the balance on or before the fifteenth day from the sale in accordance with rule 69.

Addition of costs, etc., to certificate and payment by certificate-holder of purchase money in excess of the amount of certificate.

¹Sub-rules (5) and (6) were added by notification No. 420-O.P., dated the 17th January, 1939, published in the *Calcutta Gazette* of 1939, Part I, page 209.

²Sub-rule (7) was added by notification No. 10496-C.P., dated the 6th September, 1940, published in the *Calcutta Gazette* of 1940, Part I, page 2476.

³The original rule 54 was omitted and subsequently this rule 54 was added by notification No. 420-O.P., dated the 17th January, 1939, published in the *Calcutta Gazette* of 1939, Part I, page 209.

(Schedule II.—Rules.—Rules 54A—56.)

Time limit within which the certificate-debtor can dispute claim of certificate-holder to receive payment of the balance of the sale proceeds under section 26, clause (c).

Sale of agricultural produce.

¹54A. If a certificate-holder files a claim before the Certificate-officer to receive any amount referred to in clause (c) of sub-section (1) of section 26, the Certificate-officer shall issue notice to the certificate-debtor, who may dispute the claim within thirty days from the service of the notice. If the certificate-debtor disputes the claim, the Certificate-officer shall determine the dispute as required by sub-section (2) of section 26, and payment of the amount claimed will be made in accordance with such determination. If the certificate-debtor does not dispute the claim, the amount claimed by the certificate-holder shall be paid to him after the said period of thirty days in accordance with the provisions contained in clause (c) of sub-section (1) of the said section.

Sale of movable property.

55. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited :

Provided that the Certificate-officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or a person authorized to act in his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special Provisions relating to growing crops.

56. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored ²[or can be sold to a greater advantage in an unripe state (e.g. as green wheat)], it may be sold before it is cut and gathered ; and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending ³[or] cutting or gathering the crop.

¹Rule 54A was inserted, vide Board of Revenue notification No. 13456-C. P., dated the 6th September, 1935, published in the *Calcutta Gazette* of 1935, Part I, page 1746.

²These words were inserted, vide Board of Revenue notification No. 12971-C.A., dated the 20th October, 1933, published in the *Calcutta Gazette* of 1933, Part I, pages 1532-33.

³This word was substituted for the word "and", *ibid.*

of 1913.]

(Schedule II.—Rules.—Rules 57—60.)

57. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be resold.

Sale by public auction.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

58. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Irregularity not to vitiate sale, but any person injured may sue.

59. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

Delivery of movable property, debts and shares.

(2) Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate-officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

60. (1) Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely :—

A B, by *C D*, Collector of the district of
in a proceeding under the Bengal Public Demands
Recovery Act, 1913, against *A. B*.

[Ben. Act II.]

(Schedule II.—Rules.—Rules 61—64.)

(3) Until the transfer of such negotiable instrument or share, the Certificate-officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same ; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting
order in
case of
other
property.

61. In the case of any movable property not hereinbefore provided for, the Certificate-officer may make an order vesting such property in the purchaser or as he may direct ; and such property shall vest accordingly.

Sale of immovable property.

Sale of
tenure or
holding
at fixed
rates,
subject to
registered
and
notified
incum-
brances.

62. (1) When a tenure or a holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction subject to registered and notified incumbrances ; and, if the bidding reaches a sum sufficient to liquidate the amount of the certificate and the costs of the sale, the tenure or holding shall be sold subject to such incumbrances.

VIII of
1885.

(2) The purchaser at such sale may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance.

Sale of
tenure or
holding
at fixed
rates, with
power
to avoid
all incum-
brances.

68. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under rule 62, does not reach a sum sufficient to liquidate the amount of the certificate and costs as aforesaid, and if the certificate-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under rule 46 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of
occupancy-
holding,
with power
to avoid
all incum-
brances.

64. (1) When an occupancy-holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance on the holding.

of 1913.]

(Schedule II.—Rules.—Rules 65—67.)

65. Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 62, 63 and 64 shall not apply.

Rules 62 to 64 not to apply in certain cases to certificate-holders who are co-sharer landlords.

66. (1) Where an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate-officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate-officer may, on his application postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

Postponement of sale to enable certificate-debtor to raise amount due under certificate.

(2) In such case the Certificate-officer shall grant a certificate to the certificate-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 8 or section 18, to make the proposed mortgage, lease or sale :

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the certificate-debtor but to the Certificate-officer :

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Certificate-officer,

67. (1) When a tenure or holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof, the certificate-debtor shall not bid for or purchase the tenure or holding.

Prohibition of purchase of tenure or holding by certificate-debtor.

(2) If a certificate-debtor purchases, by himself or through another person, a tenure or holding so sold, the Certificate-officer may, if he thinks fit, on the application of the certificate holder or any other person interested in the sale, by order, set aside the sale ; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

Note.—Rule 67(1) is binding on the certificate-debtor, but not on the Certificate-officer, who under rule 67(2) may, in his discretion, allow such bids and refuse subsequent applications to set aside a sale on such grounds.

(Schedule II.—Rules.—Rules 68—75.)

Deposit by
purchaser
and
re-sale in
default.

68. On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five *per cent.* on the amount of his purchase-money, to the officer or other person conducting the sale ; and, in default of such deposit, the property shall forthwith be re-sold.

Time for
payment of
purchase-
money, |
in full.

69. The full amount of purchase-money payable shall be paid by the purchaser to the Certificate-officer on or before the fifteenth day from the sale of the property.

Procedure
in default
of
payment.

70. In default of payment within the period mentioned in rule 69, the deposit may, if the Certificate-officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Fresh
proclama-
tion
before
re-sale.

71. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Bid of co-
sharer
to have
preference.

72. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Return of
purchase-
money
in certain
cases.

73. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of section 22, and such interest as the Certificate-officer may allow, shall be paid to the purchaser.

Certificate
to pur-
chaser.

74. (1) Where a sale of immovable property has become absolute, the Certificate-officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall bear date the day on which the sale became absolute.

Delivery of
property
in occu-
pancy of
certificate-
debtor.

75. Where the immovable property sold is in the occupancy of the certificate-debtor, or of some person on his behalf, or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under section 7, and a certificate in respect thereof has been granted under rule 74, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

of 1913.]

(Schedule II.—Rules.—Rules 76,—79.)

76. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 74, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.

Delivery of property in occupancy of tenant or other person.

Arrest and Detention.

77. [Omitted—by sec. 4 of the Bengal Public Demands Recovery (Amendment) Act, 1953 (*West Ben. Act XIII of 1953*).]

78. (1) When a certificate has been signed either in accordance with the provisions of section 4, or on a requisition made under section 5, no certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate-officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate-officer.

Subsistence allowance.

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate-officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the ¹[State Government] for the subsistence of arrested judgement-debtors, or, where no such scale has been fixed, as the Certificate-officer considers sufficient with reference to the class to which the certificate-debtor belongs.

(3) The monthly allowance fixed by the Certificate-officer, shall be supplied, by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate-officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the civil prison; and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the civil prison shall be deemed to be costs in the proceeding:

Provided that the certificate-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Supplemental.

79. (1) Every Certificate-officer shall cause to be kept in his office a register of certificates filed in his office under this Act, and shall cause particulars of all such certificates to be entered in such register.

Register of certificates.

¹See foot-note 2 on page 390, *ante*.

[Ben. Act III]

(Schedule II.—Rules.—Rules 80—83A.)

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same; and a fee of one anna shall be chargeable for every such inspection.

Note.—The fee should be prepaid by court-fee stamp affixed to the application.

Payment
by instal-
ments.

80. (1) Payment of the amount due under any certificate may be made by instalments, if the Certificate-officer in whose office the certificate is filed so directs.

(2) The payment of every such instalment shall be entered in the register referred to in rule 79.

Remit-
tance to
Certificate-
officer
of sums
received
under a
certificate
transferred
for
execution.

81. When a copy of a certificate has been sent to another officer under section 12, sub-section (1), all sums except Government demands, received by such officer under such certificate shall be remitted by him to the Certificate-officer in whose office the original certificate is filed.

Entry of
satisfac-
tion.

82. When the whole or any portion of the amount due under a certificate has been realized, the Certificate-officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in rule 79.

Communi-
cation of
satisfac-
tion to
other
persons.

83. When a copy of a certificate has been sent to another officer under section 12, sub-section (1),

or when a certificate has been signed upon a requisition,

any satisfaction of the certificate, whether in whole or in part shall be certified to such officer, or to the sender of such requisition, as the case may be.

Exemp-
tion of
requisitions
from
Liquidator
of Co-
operative
Societies
from
ad valorem
fee.

¹83A. Requisitions from a Liquidator of Co-operative Societies appointed under section 90 of the Bengal Co-operative Societies Act, 1940, submitted under rule 139 of the Bengal Co-operative Societies Rules, 1942, shall be treated as applications from a Government officer, and shall accordingly be exempt from *ad valorem* fee.

Ben. Act
XXI of 1940.

¹This rule was substituted for the existing rule by notification No. 5181 O. P., dated the 20th June, 1949, published in the *Calcutta Gazette* of 1949, Part I, page 1051.

of 1913.]

(Schedule II.—Rules.—Rules 83B—84.)

83B. Where one of two or more certificate-debtors is found to have died before the certificate was filed under section 4 or section 6, the Certificate-officer may, at any stage of the proceedings and on such terms as he thinks fit, order that the name of the deceased be struck out and that the legal representative of the deceased be added as a certificate-debtor, and the certificate shall be amended accordingly.

Procedure to be followed when one of two or more certificate-debtors is found to have died before the filing of the certificate.

(2) When a certificate is so amended, the Certificate-officer shall cause a notice and a copy of the amended certificate to be served, in accordance with the provisions of section 7, on the new certificate-debtor and, if the Certificate-officer thinks fit, on the other certificate-debtors.

(3) The certificate proceedings as against the new certificate-debtor shall be deemed to have begun only on the service of such notice and certificate on him.

Ben. Act
III of 1913.

83C. Requisitions from the Directorate of Commercial Taxes under sub-section (1) of section 5 of the Bengal Public Demands Recovery Act, 1913, made during the period from 24th March, 1952 to 15th January, 1953, shall not be chargeable with fees.

Forms.

84. The forms set forth in the Appendix shall be used, with such variations as circumstances may require.

Forms in Appendix.

Note.—It has been laid down by the Calcutta High Court in the case reported in LVIII-C. W. N., pages 578-586, that the certificate form is a statutory form and the effect of any error or omission in filling it is fatal to the certificate and to the entire proceeding which is liable to be quashed. The following defects, namely—

- (i) misdescription in the name of the certificate-holder in the certificate, or,
- (ii) omission to mention correctly in the certificate other particulars including the period for which the demand is due and the reason for the imposition of penalty, or
- (iii) omission to sign by the certificate-officer the certificate which is filed in his office,

renders the certificate invalid.

(Vide Board's 'D' Group, C. P. Branch file No. 23 of 1954.)

*Rule 83C was inserted by notification No. 9600 O. P., dated the 13th September, 1954, published in the Calcutta Gazette, of 1954, Part I, page 8174.

(Schedule II.—Form No. 1.)

APPENDIX.

FORMS.

(See rule 84.)

¹FORM No. 1

West Bengal Form No. 1027.

Certificate of Public Demand

রাজকীয় প্রাপ্যের সার্টিফিকেট

(See sections 4 and 6.)

(৪ ও ৬ ধারা দেখুন)

Certificate No..... filed in the officer of*.....

.*র সার্টিফিকেট কর্মচারীর অফিসে গাঁথিয়া রাখা সার্টিফিকেট নং.

Name and address of certificate-holder :

সার্টিফিকেটধারীর নাম ও ঠিকানা।

Amount of public demand [including interest, if any, and including the fee paid under section 5, sub-section (2), if any] for which this certificate is signed, and period for which such demand is due.

[হুদ থাকিলে হুদ সমেত এবং ৫ ধারার (২) প্রকরণানুযায়িক ফী সমেত] রাজকীয় প্রাপ্য বাবত যত টাকার নিমিত্ত এই সার্টিফিকেটের স্বাক্ষর করা গেল এবং যে কালের নিমিত্ত ঐ টাকা প্রাপ্য।

Rs.

nP.

টাকা

নয়া পয়সা

Name and address of certificate-debtor :

সার্টিফিকেটমত খাতকের নাম ও ঠিকানা।

Further particulars of the public demand for which this certificate is signed.

যে রাজকীয় প্রাপ্যের নিমিত্ত এই সার্টিফিকেট স্বাক্ষর করা গেল সেই প্রাপ্যের আরও বিবরণ।

*Name of district

*জিলার নাম।

I certify that the sums mentioned hereinbefore are due to the certificate-holder by the certificate-debtor (s) and that they are justly recoverable, the recovery by suit not being barred by law.

আমি এই সার্টিফিকেট দিতেছি যে, পূর্বে উল্লিখিত টাকা সার্টিফিকেটমত খাতক (গণ) হইতে সার্টিফিকেটধারীর প্রাপ্য ও জায়গাতে আদায়যোগ্য এবং মোকদ্দমা করিয়া আদায়সম্বন্ধে আইনমতে বাধা নাই।

Dated this

day of

19 . . .

তারিখ অগ ১২ সালের

মাসের

দিবস।

Certificate-Officer.

সার্টিফিকেট কর্মচারী।

¹Substituted for the existing Form No. 1 by notification No. 7716 O.P., dated 20th April, 1961, published in the Calcutta Gazette of 1961, Part I, pages 1097—1098.

The Bengal Public Demands Recovery Act, 1913,

of 1913.]

(Schedule II.—Forms Nos. 2, 3.)

FORM No. 2.

(Bengal Form No. 1028.)

Requisition for a Certificate.

(See section 5.)

To the Certificate-officer of the district of

Name of certificate-debtor.	Address of certificate-debtor.	Amount of public demand for which this requisition is made.	Nature of the public demand for which this requisition is made.
1	2	3	4

I request you to recover the abovementioned sum of Rs. , which I am satisfied, after inquiry, is due from the said in respect of

Verified by me on the day of , 19

A. B.,
(Designation.)

FORM No. 3.

(Bengal Form No. 1029.)

Notice to Certificate-debtor.

(See section 7.)

To (name of certificate-debtor).

You are hereby informed that a certificate against you for Rs. , due from you on account of , [has been filed] in my office, under section of the Bengal Public Demands Recovery Act, 1913. If you deny your liability to pay the said sum of Rs. , you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed it will be executed under the provisions of the said Act, unless you pay Rs. (Rs. on account of the demand and Rs. on account of costs of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate abovementioned is hereto annexed.

You may remit the amount by money order, quoting the number and year of the certificate.

Dated this day of , 19

A. B.,
Certificate-officer of

¹These words were substituted for the words "has this day been filed" by notification No 7716 O. P., dated the 20th April, 1961, published in the *Calcutta Gazette, Extraordinary*, of 1961, Part I, pages 1097-98.

(Schedule II.—Forms Nos. 4, 5.)

FORM No. 4.

(Bengal Form No. 1031.)

Petition Denying Liability.

(See section 9.)

To

The Certificate-officer of

The humble petition of *(name of petitioner)* of *(address)*

SHEWETH—

That a certificate No. _____ of _____ (*year*), for the sum of Rs. _____ has been filed, against your petitioner in your office under section _____ of the Bengal Public Demands Recovery Act, 1913.

That your petitioner respectfully denies his liability to pay the said sum of Rs. _____ (*or* where the liability to pay part is admitted, denies his liability to pay more than Rs. _____), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (*or modified or varied*)—

A. B.,

(Petitioner).

FORM No. 5.

(Bengal Form No. 1032.)

Notice to show cause why sale should not be set aside,

[See proviso to section 25(2).]

To

WHEREAS the undermentioned property was sold on the _____ day of _____ 19 _____ in execution of certificate No. _____, dated the _____, 19 _____. And whereas _____, the certificate holder [*or certificate-debtor*] has applied to me to set aside the sale of the said property on the ground that

Take notice that if you have any cause to show why the said application should not be granted you should appear with your proofs in this office on the _____ day of _____ 19 _____, when the said application will be heard and determined.

Given under the seal of the Court, this _____ day of _____ 19 _____

Description of property.

Certificate-officer.

The Bengal Public Demands Recovery Act, 1913.

1913.]

(Schedule II Forms Nos. 6, 7.)

FORM No. 6.

Summons to appear and answer charge of obstructing execution of Certificate.

[See section 27(2).]

Certificate No. _____ of 19 ____

To

WHEREAS _____, the certificate-holder in the above certificate has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession ;

You are hereby summoned to appear in this Court on the _____ day of
19 __, at _____ a.m. to answer the said complaint.

Given under the seal of the Court, this _____ day of _____ 19 ____

Certificate-officer of

FORM No. 7.

(Bengal Form No. 1045.)

Warrant of Committal.

(See section 28.)

To

THE OFFICER IN CHARGE OF THE CIVIL PRISON AT

WHEREAS the undermentioned property has been sold to the purchaser at auction sale in execution of certificate case No. _____, dated _____, 19 __, and whereas the Court is satisfied that _____ without any just cause resisted (or obstructed) and is still resisting (or obstructing) the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison ;

You are hereby commanded and required to take and receive the said _____ days.
to the civil prison and to keep him imprisoned therein for the period of _____

Given under the seal of the Court, this _____ day of _____ 19 ____

Certificate-officer.

(Schedule II.—Forms Nos. 8, 9.)

FORM No. 8.

(Bengal Form No. 1084.)

Warrant of Arrest.

(See section 29.)

To

WHEREAS a certificate No. _____ was filed in this office on the _____
 19, under section _____ of the Bengal Public Demands Recovery
 Act, 1913 against _____ certificate-debtor, and the sum of Rs. _____
 as noted below, is due from him in respect of the said certificate ;

	Rs.	s.	p.
Original demand
Interest
Costs
Execution

Total

and whereas the said sum of Rs. _____ has not been paid to the certificate-holder in satisfaction of the said certificate ; these are to command you to arrest the said certificate-debtor and, unless the said certificate-debtor shall pay to you the said sum of Rs. _____, together with Rs. _____ for the costs of executing this process, to bring him before the Court with all convenient speed.

You are further commanded to return this warrant on or before the _____ day of _____ 19, with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this _____ day of _____ 19 .

Certificate-officer.

FORM No. 9.

(Bengal Form No. 1036.)

Order committing Certificate-debtor to the Civil Prison.

(See section 29.)

To

THE OFFICER IN CHARGE OF THE CIVIL PRISON AT _____

WHEREAS _____, who has been brought before me this _____ day of _____, 19, under a warrant in execution of certificate No. _____, filed in this office on the _____, 19, under section _____ of the Bengal Public Demands Recovery Act, 1913 and by which certificate it was ordered that the said _____ should pay. _____ ;

and whereas the said _____ has not paid the said sum nor satisfied me that he is entitled to be discharged from custody ;

You are hereby, _____ commanded and required to take and receive the said _____

_____ into the civil prison and keep him imprisoned therefor a period not exceeding _____ or until the said certificate shall be fully satisfied, or the said _____ shall be otherwise entitled to be released according to the terms and provisions of section 81 or section 82 of the said Act ; and I hereby fix _____ annas per diem as the rate of the monthly allowance for the subsistence of the said _____

Dated this _____ during his confinement under this order of committal.
 day of _____, 19 .

Certificate-officer

¹The words "in the name of the King-Emperor of India" were omitted by Article 8 (1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

The Bengal Public Demands Recovery Act, 1913.

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(Schedule II.—Forms Nos. 10, 11.)

FORM No. 10.

Order for the release of a person imprisoned in execution of a Certificate,

(See sections 31 and 32.)

District

Certificate No.

of 19 .

To

THE OFFICER IN CHARGE OF THE CIVIL PRISON AT

Under orders passed this day, you are hereby directed to set free certificate-debtor, now in your custody.

Dated this

day of

, 19 .

Certificate-officer.

FORM No. 11.

(Bengal Form No. 1037.)

Notice to Legal Representative of Certificate-debtor.

(See section 43.)

To *(name of legal representative)*.

You are hereby informed that a certificate against
due from him on account of , deceased, for Rs.
19 , under section , was filed in this office on the
of the Bengal Public Demands
Recovery Act, 1913, and that a demand of Rs. , in respect of the said
certificate proceeding is due from you as the legal representative of the said
deceased. If you deny your liability to pay the said sum of Rs. , you may,
within thirty days from the service of this notice, file in my office a petition denying liability in
whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to
show cause, or do not show sufficient cause, why such certificate should not be executed, it will be
executed, under the provisions of the said Act, unless you pay Rs. (Rs.
on account of the demand and Rs. on account of cost of realization) into
my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable
property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal,
remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate abovementioned is hereto annexed.

You may remit the amount by money order, quoting the number and year of the certificate.

Dated this

day of

, 19 .

A. B.,

Certificate-officer of

(Schedule II.—Form No. 11A.)

FORM No. 11A.

Warrant of Attachment of Movable Property.

(See sections 13 and 14.)

To

WHEREAS a certificate No. _____, 19____, under section _____ of the Bengal Public Demands Recovery Act, 1913, against debtor and the sum of Rs. _____, as noted below, is due from him in respect of the said certificate :

Rs. a. p.

Original demand	...	...	...	...
Interest	...	...	...	...
Costs	...	...	...	...
Execution	...	...	...	...

Total ...

and whereas the said sum of Rs. _____ has not been paid to the certificate-holder in satisfaction of the said certificate ; these are to command you to attach the movable property of the said certificate-debtor" and, unless the said certificate-debtor shall pay to you the said sum of Rs. _____ together with Rs. _____, for the costs of executing this process, to hold the same until further orders from the Court.

You are further commanded to return this warrant on or before the _____ day of _____, 19____, with endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this _____ day of _____, 19____

Certificate-officer.

*When the order is to attach part of the movable property only, add here "to the value of Rs. _____"

*This form was inserted in Schedule II by Board of Revenue notification No. 144 C.-P., dated the 11th January, 1919, published in the *Calcutta Gazette*, dated the 15th *idem*, Pt. I. page 53 (see section 50, ante).

(1913)

(Schedule II.—Forms Nos. 11B, 11C.)

FORM No. 11B.

Notice to persons added to the Original Certificate.

[See rule 83B(2).]

To

You are hereby informed that a certificate against

(a)
(b)
(c)
etc.

for Rs.

on account of

filed in this office on the

19, under section

was of the Bengal

Public Demands Recovery Act, 1913. It now appears that the certificate-debtor

(a) or
(b) or
(c)
etc.

had died before the said certificate was filed and that you are liable as his legal representative to satisfy the said demand and your name has accordingly been added in the certificate. If you deny your liability to pay the said sum of Rs.

you may, within thirty days from the service of this notice, file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed under the provisions of the said Act, unless you pay Rs. (Rs. on

account of demand and Rs.

on account of cost of realisation)

into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate abovementioned is hereto annexed.

You may remit the amount by money order, quoting the number and year of certificate.

Dated the

day of

19,

Certificate-officer of

FORM No. 11C-

Notice to Surviving Certificate-debtor.

[See rule 83B(2).]

WHEREAS a certificate against

(a) or
(b) or
(c)
etc.

for Rs.

on account of

was filed in this office

on the

19,

and a copy of the said certificate and a notice under section 7 of the Bengal Public Demands Recovery Act, 1913, has been served on you and whereas the said

(a) or
(b) or
(c)
etc.

having died before the filing of the said certificate the name of his legal representative (X) has been added in and the name of the said

(a) or
(b) or
(c)
etc.

has been struck out from the said certificate, a copy of the certificate as amended is hereby annexed for your information.

Certificate-officer of

(Schedule II.—Forms Nos. 12, 13.)

FORM No. 12.

Attachment in Execution.

Prohibitory order, where the property consists of debts not being Negotiable Instruments, or of movable property not in the possession of the certificate-debtor.

[See rule 18 (1)(a) and (c).]

To

WHEREAS

has failed to satisfy certificate

No. of 19 , for Rs.

it is ordered that defendant be and is hereby prohibited and restrained until the further order of this Court, from receiving from you¹ to the said certificate-debtor, namely, and that you, the said be, and you are hereby prohibited and restrained, until the further order of this Court from² to any person whomsoever, or otherwise than into this Court.

GIVEN under the seal of the Court this day of

19 .

Certificate officer of

¹"A certain debt alleged now to be due," or "certain movable property in your possession but alleged to belong."

²"Making payment of the said debt" or "giving delivery of the said movable property."

FORM No. 13.

Attachment in Execution.

Prohibitory order, where the property consists of shares in the capital of a Corporation.

[See rule 18 (1)(b).]

To

and to

, certificate-debtor

, Secretary of Corporation.

WHEREAS

has failed to satisfy

certificate No. of 19 , for Rs.

ordered that you, the defendant, be and you are hereby prohibited and restrained until the further order of this Court from making any transfer of in the aforesaid Corporation, namely, or from receiving payment of any dividends thereon; and you the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under the seal of the Court, this

day of

19 .

Certificate officer of

The Bengal Public Demands Recovery Act, 1913.

of 1913.]

(Schedule II.—Forms Nos. 14, 15.)

FORM No. 14.

Attachment in Execution.

Prohibitory order, where the property to be attached consists of movable property, to which the certificate-debtor is entitled subject to a lien or right of some other person to the immediate possession thereof.

[See rule 18 (2)(c).]

To

WHEREAS

has failed to satisfy certificate

No. _____ of 19 _____, for Rs. _____

it is ordered that the Certificate-debtor be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from

the following property in the possession of the said

that is to say,

to which the certificate-debtor is entitled, subject to any claim of the said

and the said

is hereby prohibited and restrained until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under the seal of the Court, this the _____

day of _____

19 _____

Certificate-officer of _____

FORM No. 15.

Order to attach Salary of Public Officer or servant of Railway Company or Local Authority.

(See rule 20.)

To

WHEREAS

certificate-debtor in

certificate case No. _____

of _____ 19 _____

is

receiving his salary at your
or allowance

hands; and whereas

certificate-holder in the

said case, has applied in this Court for the attachment of the

salary of the
or allowance

said

to the extent of

to withhold the said sum of _____

due to him under the certificate, you are hereby required
from the

salary of the said
or allowance

in monthly instalments

of _____

and to remit the said

sum

or monthly instalments

to this Court.

GIVEN under the seal of the Court, this _____

day of _____

19 _____

Certificate-officer of _____

* Describe office of certificate-debtor.

(Schedule II.—Forms Nos. 16—18.)

FORM No. 16.

Order of Attachment of Negotiable Instrument.

(See rule 21.)

To

THE COLLECTORATE *Nasir*,

WHEREAS an order has been passed by this Court on the
 day of 19 , for the attachment of
 , you are hereby directed to seize the said

and bring the same into Court,

GIVEN under the seal of the Court, this day of 19 .

Certificate-officer.

FORM No. 17.

Attachment.

Prohibitory order, where the property consists of money or of any security in the custody of a
 Court of Justice or officer of Government.

(See rule 22.)

Certificate case No. of 19

To

SIR,

The certificate-holder having applied, under rule 22 of Schedule II of the Bengal Public
 Demands Recovery Act, 1913, for an attachment of certain money now in your hands;¹

I request that you will hold the said
 money subject to the further order of this Court.

I have the honour to be,
 SIR,
 Your most obedient servant,

Certificate-officer of .

Dated the day of 19 .

¹Here state how the money is supposed to be in the hands of the person addressed, on what
 account, etc.

FORM No. 18.

(Bengal Form No. 1038.)

Notice to Certificate-holder.

(See rule 39.)

WHEREAS
 the removal of attachment on
 of Certificate No.

before me on has made application to this Court for
 19 , either in person or by a pleader duly instructed to support your claim as attaching creditor.

placed at your instance in execution
 of 19 ; this is to give you notice to appear
 , the day of

GIVEN under the seal of the Court, this day of , 19 .

Certificate-officer.

The Bengal Public Demands Recovery Act, 1913.

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of 1913.]

(Schedule II.—Forms Nos. 19, 20.)

FORM No. 19.

(Bengal Form No. 1039.)

Warrant of Sale of Property.

(See rule 44.)

To

THE

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this office, and after making due proclamation, the undermentioned property attached in execution of certificate No. _____, or so much of the said property as in favour of _____, shall realize the sum of Rs. _____, being the of the said certificate and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of _____, 19____, with an endorsement certifying the manner in which it has been executed or on the reason why it has not been executed.

GIVEN under the seal of the Court, this _____ day of _____, 19____

Specification of property :

Certificate-officer.

FORM No. 20.

(Bengal Form No. 1040.)

Notice of the day fixed for setting a Sale Proclamation.

(See rule 46.)

To

_____, Certificate-debtor.

WHEREAS, in execution of Certificate No. _____ of _____ a sale is about to be held of your property mentioned below ; you are hereby informed that the day of _____, 19____, has been fixed for settling the terms of the proclamation of sale.

The total amount due from you in respect of the certificate including costs and interest is _____

GIVEN under the seal of the Court, this _____ day of _____, 19____

Specification of property :—

Certificate-officer

(Schedule II.—Form No. 21.)

FORM No. 21.

(Bengal Form No. 1041.)

Proclamation of Sale.

(See rule 46.)

NOTICE is hereby given that, under rule 44 in Schedule II to the Bengal Public Demands Recovery Act, 1913, an order has been passed by me for the sale of the property mentioned in the annexed schedule, in satisfaction of the claim of the certificate-holder under the certificate mentioned in the margin of the certificate, amounting, with costs and interest up to date of sale, to the sum of Rs. _____

19 . Certificate No. of
under which
is the certificate-holder. _____
is the certificate, _____
debtor.

The sale will be by public auction and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor abovenamed as mentioned in the schedule below.

In the absence of any order of postponement, the sale will be held by _____

at the monthly sale

commencing at _____ o'clock on the _____ at _____
In the event, however, of the debt above specified, and of the costs of the sale, being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly-authorized agent. The following are the further

Conditions of Sale.

1. The particulars specified in the schedule below have been stated to the best of the information of the Certificate-officer; but the Certificate-officer will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the bidding are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it, subject always to the provisions of rule 50 in Schedule II to the Bengal Public Demands Recovery Act, 1913.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and resold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and resold.

7. The full amount of the purchase-money shall be paid by the purchaser before the office of the Certificate-officer closes on the fifteenth day after the sale of the property exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be resold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Certificate-officer thinks fit, be forfeited to the Government, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under seal of the Court, this

day of

19 .

Certificate-officer.

The Bengal Public Demands Recovery Act, 1913.

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1913.]

(Schedule II.—Form No. 22.)

Schedule of Property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more certificate-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government.	Claims (if any) which have been put forward to the property and any other known particulars bearing on its nature and value.
1	2	3	4

FORM No. 22.

(Bengal Form No. 1042.)

Order of the *Nasir* for causing publication of Proclamation of sale.

(See rule 47.)

To

THE *Nasir* of

WHEREAS an order has been made for the sale of the property of the certificate-debtor under Certificate No. , dated the , 19 , which is specified in the schedule hereunder annexed; and whereas the day of , 19 , has been fixed for the sale of said property; copies of the proclamation of sale are by this warrant made over to you and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on my office, and then to submit to me a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of , 19 .

Schedule.

Certificate-officer.

(Schedule II.—Forms Nos. 23—25.)

FORM No. 23.

(Bengal Form No. 1044.)

Certificate, by Officer holding a Sale, of the Deficiency of Price on a Resale of Property by reason of the Purchaser's Default.

(See rule 51.)

CERTIFIED that at the resale of the property in execution of Certificate No. _____, dated the _____, 19____, in consequence of default on the part of the purchaser, there was a deficiency in the price of the said property, amounting to Rs. _____ and that the expenses attending such resale amounted to Rs. _____ making a total of Rs. _____, which sum is recoverable from the defaulter.

Dated the _____ day of _____, 19____.

Officer holding the sale.

FORM No. 24.

Notice to person in possession of movable property sold in execution.

(See rule 59(2).)

To

WHEREAS _____ has become the purchaser at a public sale in execution of Certificate No. _____, dated _____, 19____, of _____ (now in your possession) you are hereby prohibited from delivering possession of the said _____ to any person except the said _____

GIVEN under the seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

FORM No. 25.

Prohibitory order against the transfer of shares sold in execution.

(See rule 59(3).)

To

AND

_____, SECRETARY OF
CORPORATION.

WHEREAS _____ has become the purchaser at a public sale in execution of Certificate No. _____, dated _____, 19____, of _____ certain shares in the above Corporation, that is to say, of _____ standing in the name of you _____; it is ordered that you _____ be, and you are hereby, prohibited from making any transfer of the said shares to any person except the _____, the purchaser aforesaid, or from receiving any dividends thereon; and you _____, Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said _____, the purchaser aforesaid.

GIVEN under the seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

of 1913.]

(Schedule II.—Forms Nos. 26, 27.)

FORM No. 26.

Prohibitory Order against Payment of Debts sold in Execution to any other than the Purchaser.

[See rule 59(3).]

To

AND TO

WHEREAS

has become the purchaser at a public sale in execution of Certificate No. of 19 being debts due from you to you

it is ordered that you be, and you are hereby prohibited

from receiving and you from making payment of the said debt to any person or persons except the said

GIVEN under the seal of the Court, this day of , 19 .

Certificate-officer of

FORM No. 27.

Certificate to certificate-debtor authorizing him to mortgage, lease or sell property.

(See rule 66.)

WHEREAS in execution of Certificate No. of 19 , an order was made on the day of , 19 , for the sale of the undermentioned property of the certificate-debtor and whereas the Court has, on the application of the said certificate-debtor, postponed the said sale to enable him to raise the amount of the certificate by mortgage, lease or private sale of the said property or of some part thereof :

This is to certify that the Court doth hereby authorise the said certificate-debtor to make the proposed mortgage, lease, or sale within a period of from the date of this certificate : provided that all monies payable under such mortgage, lease, or sale shall be paid into this Court and not to the said certificate-debtor.

Description of Property.

GIVEN under the seal of the Court, this day of 19 .

Certificate-officer.

[Ben. Act III of 1913.]

(Schedule II.—Forms Nos. 28—30.)

FORM No. 28.

Certificate of Sale of Land.

(See rule 74.)

THIS IS TO CERTIFY that _____ has been declared the purchaser, at a sale by public auction on the _____ day of _____, 19____, of _____, 19____, in execution of Certificate No. _____, dated the _____, 19____, and that the said sale has been duly confirmed by me.

GIVEN under the seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

FORM No. 29.

Order for Delivery to Certified Purchaser of Land at a Sale in Execution.

(See rule 75.)

To

THE
WHEREAS

_____ has become the certified purchaser of the _____, 19____, at a sale in execution of Certificate No. _____, dated _____, 19____; you are hereby ordered to put the said the certified purchaser, as aforesaid, into possession of the same.

GIVEN under the seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

FORM No. 30.

Notice to Show Cause why Warrant of Arrest should not issue.

(See rule 77.)

To

WHEREAS

_____ has made application to me for execution of Certificate No. _____ of 19____, by arrest and imprisonment of your person; you are hereby required to appear before me on the _____ day of _____, 19____, to show cause why you should not be committed to the civil prison in execution of the said certificate.

GIVEN under the seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

Bengal Act I of 1914

(THE BENGAL LAWS ACT, 1914)¹.

REPEALED IN PART ..

.. {Ben. Act I of 1939.
{Ben. Act XVI of 1946.

(14th January, 1914.)

An Act to assimilate certain enactments in force in Eastern and Western Bengal to amend certain enactments, and to repeal certain other enactments.

Whereas it is expedient to extend certain enactments of the Bengal Legislative Council to Eastern Bengal, and to extend certain enactments of the Eastern Bengal and Assam Legislative Council to Western Bengal ;

And whereas it is also expedient that certain formal amendments should be made in enactments in force in Bengal ;

And whereas it is also expedient that certain enactments in force in Bengal should be repealed ;

55 and 56
Vict., c. 14.

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Laws Act, 1914.

Short title.

2. In this Act,—

Definitions.

(1) "Eastern Bengal" means the territory mentioned in Part I of Schedule A to the Bengal, Bihar and Orissa and Assam Laws Act, 1912, and

(2) "Western Bengal" means the territory mentioned in Part II of that schedule.

VII of
1912.

3. The enactments specified in Schedule I are hereby extended to Eastern Bengal, to the extent mentioned in column 4 thereof.

Extension
of enact-
ments to
Eastern
Bengal.

4. The enactments specified in Schedule II are hereby extended to Western Bengal, to the extent mentioned in column 4 thereof :

Extension
of enact-
ments to
Western
Bengal.

E. B. & A.
Act II of
1907.
Ben. Act
III of
1884.
Ben. Act
II of
1886.

Provided that the Eastern Bengal and Assam Disorderly Houses Act, 1907, shall not apply to any municipality, constituted under the Bengal Municipal Act, 1884², in which the Calcutta Suburban Police Act, 1866, is in force.

¹ *Legislative Papers.*—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1913, Pt. IV, page 150 ; for Report of Select Committee, see *ibid*, Pt. IV, pages 152, 178 ; for Proceedings in Council, see *ibid*, Pt. IVA, pages 659, 660, 779 and 780.

Local Extent.—Since this Act has no local extent clause it must be taken to extend to the whole of the State of West Bengal.

² Ben. Act III of 1884 was repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), and this reference should now be construed as a reference to the latter Act—see sec. 10 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

(Sections 5-7.)

5. [*Amendment of enactments.*—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

6. [*Repeal of enactments.*—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

Continu-
ance of
orders, etc.,
issued
under
certain
repealed
enact-
ments.

7. Every appointment, order, rule, notification or form made or issued under—

- (a) the Land Registration Act, 1876, as amended by the Bengal Land Registration (Amendment) Act, 1906¹,
- (b) the Bengal Military Police Act, 1892², or
- (c) the Bengal Disorderly Houses Act, 1906³,

Ben. Act
VII of
1876.

Ben. Act
II of
1906.

V of 1892.
Ben. Act
III of
1906.

shall, so far as it is not inconsistent with—

- (i) the Land Registration Act, 1876, as amended by the Eastern Bengal and Assam Land Registration (Amendment) Act, 1907,
- (ii) the Eastern Bengal and Assam Military Police Act, 1912,
or
- (iii) the Eastern Bengal and Assam Disorderly Houses Act, 1907,

E. B. & A.
Act I of
1907.

E. B. & A.
Act III of
1912.

E. B. & A.
Act II of
1907.

as the case may be, continue in force, and be deemed to have been made or issued under that Act, unless and until it is superseded by any appointment, order, rule, notification or form made or issued under that Act.

¹Ben. Act II of 1906 is repealed by this Act.

²Act V of 1892 is repealed by this Act.

³Ben. Act III of 1906 is repealed by this Act.

The Bengal Laws Act, 1914.

of 1914.]

(Schedules I, II.)

SCHEDULE I.

ENACTMENTS EXTENDED TO EASTERN BENGAL,

(See section 3.)

Year.	Number.	Short title.	How far extended.
1	2	3	4
<i>Bengal Acts.</i>			
1899	I	The Bengal General Clauses Act, 1899.	The whole Act, as applying to— (1) the other Acts specified in this schedule, and (2) any Bengal Act passed after the first day of April, 1912.
1908	V	The Bengal Local Self-Government (Amendment) Act, 1908.	The whole Act.
1909	II	The Bengal Court of Wards (Amendment) Act, 1909.	The whole Act.
1911	II	The Bengal Vaccination (Amendment) Act, 1911.	The whole Act.
1911	V	The Calcutta Improvement Act, 1911.	Section 82 and section 86 in so far as it affects section 82.

SCHEDULE II.

ENACTMENTS EXTENDED TO WESTERN BENGAL.

(See section 4.)

Year.	Number.	Short title.	How far extended.
1	2	3	4
<i>Eastern Bengal and Assam Acts.</i>			
1907	I	The Eastern Bengal and Assam Land Registration (Amendment) Act, 1907.	The whole Act.

¹The entry relating to Ben. Act II of 1910 was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Schedules II, III.)

SCHEDULE II—concl'd.

ENACTMENTS EXTENDED TO WESTERN BENGAL—concl'd.

(Sec section 4.)

Year.	Number.	Short title.	How far extended.
1	2	3	4

Eastern Bengal and Assam Acts.

1907	II	The Eastern Bengal and Assam Disorderly Houses Act, 1907.	The whole Act.
1*	*	*	*
1*	*	*	*

SCHEDULE III.

[ENACTMENTS AMENDED.]

*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946
(Ben. Act XVI of 1946).*

*The entries relating to E. B. and A. Acts I of 1909 and III of 1912 were repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

of 1914.]

(Schedule IV.)

SCHEDULE IV.

[ENACTMENTS REPEALED.]

*Rep. by sec. 3 and the Second Sch. of the Bengal Repealing
and Amending Act, 1938 (Ben. Act I of 1939).*

Bengal Act III of 1914
(THE DOVETON TRUST ACT, 1914)¹.

ADAPTED

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(18th February, 1914.)

An Act to abolish the Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies, and to provide for the application of the property and funds thereof as nearly as possible in accordance with the intentions of the founders.

Whereas, on the first day of March, 1823, an Educational Society was established in Calcutta, under the designation of "The Parental Academic Institution", with the object of establishing one or more schools under its own control in order to procure the means of affording to youth the best education of which existing circumstances would admit, and, as far as the state of funds would allow, to provide education for the orphans of members dying not possessed of property sufficient to educate their children ;

Preamble.

And whereas the designation of the said Society was changed in the year 1855 to that of "The Parental Academic Institution and Doveton College" ;

XXI of
1860.

And whereas the said Society was registered as a Society under the Societies Registration Act, 1860, on the twenty-ninth day of August, 1881 ;

And whereas the designation of the said Society was again changed in the year, 1886, on the incorporation therewith of "The Young Ladies' Institution," to that of "The Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies" ;

And whereas various properties and funds have from time to time been vested in the Governing Body of the said Society, and in other persons, for the benefit of, or in trust for, the said Institution or pupils to be educated therein ;

¹ *Legislative Papers.*—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1913, page 172 ; for Report of Select Committee, see *ibid.*, page 243 ; for Proceedings in Council, see *ibid.*, Pt. IVA, pages 730 to 733, 791 to 794 ; *ibid.*, 1914, Pt. IVA, page 81.

[Ben. Act III]

(Sections 1-3.)

And whereas the said Institution is now governed by certain persons claiming to be a Committee duly elected or appointed under an order made by the High Court, Calcutta, on the eighth day of April, 1907 ;

And whereas it appears to the Governor in Council that the said Committee are unable satisfactorily to manage the said Institution according to the intentions of its founders, and that portions of the property and funds of the Institution have been wasted away in litigation and by mismanagement, and it is expedient that the Legislature should intervene in order to prevent further waste and mismanagement ;

And whereas it appears to the Governor in Council that the objects of the founders of the said Institution would best be met by providing for the application of its property and funds, under the direction of the Government, to the education of Christian children of what is known as the Domiciled Community of Bengal ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Council Act, 1892, to the passing of this Act ;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

Short
title.
Abolition
of the
Doveton
Institution.

1. This Act may be called the Doveton Trust Act, 1914.

2. The "Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies" is hereby abolished.

Vesting
and
applica-
tion of
trust
property
and funds.

3. All property, movable and immovable, which is vested in the Managing Committee of the said Institution, or in any other person, for the benefit of the said Institution or anywise in trust therefor, and all sums standing to the credit of the said Institution, shall vest in the Accountant-General, ¹[West Bengal], as bare trustee, and shall be applied—

- (a) to the discharge of all debts and liabilities properly payable out of, or chargeable upon, the property or funds of the said Institution, and
- (b) to making provision for the education of Christian children of what is known as the Domiciled Community of Bengal, by the granting of scholarships, by grants-in-aid to Institutions intended for the education of such children, or in such other similar manner as to the ²[State Government] may seem reasonable and proper.

¹These words were substituted for the word "Bengal" by paragraph (s) of article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1914.]

(Sections 4, 5.)

4. The ¹[State Government] shall, by notification in the ²[Official Gazette], appoint an officer of ³[the Government] (not being the Accountant-General, ⁴[West Bengal]) by the name of his office to administer the property and sums referred to in section 3 ; and all powers in respect of such property and sums, which have hitherto been exercisable by the said Managing Committee or by any other person, may henceforth be exercised by such officer subject to the control of the ¹[State Government].

Appointment of administrator, and transfer of powers to him.

5. (1) The ¹[State Government] may make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the method of applying property and funds held under this Act to the purpose specified in clause (b) of section 3 ;

(b) the securities in which funds held under this Act and not required for immediate disbursement shall be invested ;

(c) the accounts to be kept by the Accountant-General, ⁴[West Bengal] and by the officer appointed under section 4, and the mode in which such accounts are to be audited ;

(d) the periodical publication of a list of all property and funds held under this Act, and of an abstract of all accounts kept hereunder ;

(e) the fees (if any) to be paid to ⁵[the State Government] in respect of property held and administered under this Act.

(3) The power conferred by this section to make rules is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the ²[Official Gazette], and on such publication shall have effect as if enacted in this Act.

¹ See foot-note 2 on page 462, *ante*.

² These words were substituted for the words "Calcutta Gazette," by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ The words "the Crown" were originally substituted for the words "the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴ See foot-note 1 on page 462, *ante*.

⁵ The words "the Provincial Government" were originally substituted for the words "the Government" by Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act III of 1914.]

(Section 6.)

Indemnity.

6. (1) No suit shall be instituted against ¹[the Government] in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on ²[the State Government] under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on ³[the State Government].

(2) No suit shall be instituted against the Accountant-General, ⁴[West Bengal], or any officer appointed under section 4, except—

(a) for divesting him of property on the ground of its not being subject to this Act, or

(b) for making him chargeable with or accountable for the loss or misapplication of any property vested in or managed by him under this Act, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful act, neglect or default.

¹See foot-note 3 on page 463, *ante*.

²See foot-note 5 on page 463, *ante*.

³See foot-note 1 on page 462, *ante*.

Bengal Act VI of 1914

(The Bengal Medical Act, 1914.)

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THE SCHEDULE.—Qualifications entitling to registration under this Act.

Bengal Act VI of 1914

(The Bengal Medical Act, 1914.)¹

AMENDED	{	Ben. Act III of 1928. West Ben. Act XVIII of 1948. West Ben. Act XI of 1950. West Ben. Act XVI of 1954. The Government of India (Adaptation of Indian Laws) Order, 1937. The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.
ADAPTED	}	

(27th May, 1914.)

An Act to provide for the registration of Medical practitioners in Bengal ²[and for matters connected therewith].

* * * * *

55 and 56
Viot., c. 14.

⁴[Whereas] the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ; Preamble.

It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Bengal Medical Act, 1914 ; Short title,
local extent and
commencement.
- (2) It extends to the whole of ⁵[West Bengal] ; and
- (3) It shall come into force on the day on which it is published in the ⁶[Official Gazette] after having received the assent of the Governor General :

Provided that section 29, section 30 and section 31 shall not come into force until a date to be appointed in this behalf by the ⁷[State Government] by notification in the ⁸[Official Gazette].

¹LEGISLATIVE PAPERS.—For Statement of Subjects and Reasons, *see* the *Calcutta Gazette* of 1913, Pt. IV, page 246 ; for Report of Select Committee, *see* *ibid*, 1914, Pt. IV, pages 50 to 53 ; for Proceedings in Council, *see* *ibid*, 1913, Pt. IVA, pages 796, 797, and *ibid*, 1914, Pt. IVA, pages 18 to 31, 210, 544 to 592, 595 to 613.

LOCAL EXTENT.—This Act extends to the whole of West Bengal, *see* sec. 1 (2).

²These words were inserted by sec. 2 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

³The first paragraph of the Preamble was omitted by sec. 3(a), *ibid*.

⁴This word was substituted for the words "And whereas" by sec. 3(b), *ibid*.

⁵These words were substituted for the word "Bengal" by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 2—4.)

Definitions.

2. ¹[In this Act, unless there is anything repugnant in the subject or context,—]

** * *

(b) the expression "the Council" means the Council established under section 3 ;²*

³(b1) the expression "medicine" means modern scientific medicine and includes surgery and obstetrics, but does not include veterinary medicine or veterinary surgery or the Homœopathic, the Ayurvedic or the Unani system of medicine ; and the expression "medical" shall be construed accordingly ;

(c) the expression "registered practitioner" means any person registered under the provisions of this Act ;

⁴(d) the expressions "President" and "Vice-President" mean respectively the President and the Vice-President of the Council ; and

⁴(e) the expression "Registrar" means a Registrar appointed under section 14.

⁵[The West Bengal Medical Council.]

3. A Council shall be established and called ⁶["the West Bengal Medical Council"] ; and such Council shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Establishment of the West Bengal Medical Council.

Constitution of the Council.

⁷4. (1) The ⁸Council shall consist of the following members, namely :—

(a) four members to be nominated by the State Government ;

(b) two members to be elected by and from among the members of the Faculty of Medicine of the University of Calcutta ;

(c) two members to be elected by and from among the members of the Governing Body of the State Medical Faculty of West Bengal so long as that body continues to hold qualifying examinations in medicine ;

¹These words were substituted for the words "In this Act,—" by sec. 4(a) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²Clause (a) was omitted by sec. 4(b), *ibid.*

³The word "and" at the end of clause (b) was omitted and clause (b1) was inserted by sec 4(c), *ibid.*

⁴Clauses (d) and (e) were added by sec. 4(d), *ibid.*

⁵These words were substituted for the words "The West Bengal Council of Medical Registration" by sec. 5, *ibid.*

⁶These words within inverted commas were substituted for the words "the West Bengal Council of Medical Registration" within inverted commas by sec. 6, *ibid.*

⁷This section 4 was substituted for the former section 4 by sec. 7, *ibid.*

⁸As to the term of the West Bengal Council of Medical Registration constituted immediately before the commencement of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954), see foot-note 2 on page 476, *post.*

1914.]

(Section 5.)

- (d) two members to be elected by and from among themselves by the Principals, Professors, Associate Professors, Assistant Professors, Lecturers and Readers in Medical Colleges affiliated to the University of Calcutta and Visiting Surgeons and Visiting Physicians having independent charge of beds in the hospitals attached to such colleges :

Provided that no person shall be eligible for election under clause (b), clause (c) or clause (d) unless he has had at least five years' experience as a Principal, Professor, Associate Professor, Assistant Professor, Lecturer or Reader in Medical Colleges or Post-Graduate Medical Institutions affiliated to the University of Calcutta or as a Visiting Surgeon or Visiting Physician having independent charge of beds in the hospitals attached to such colleges or Institutions ;

- (e) nine members to be elected by registered practitioners from among themselves :

Provided that of the members to be elected under this clause, not less than four shall be either Graduates or Licentiates in medicine of the University of Calcutta :

Provided further that no registered practitioner shall be entitled to vote or stand as a candidate for election at an election of members to be elected under this clause unless he—

(i) is a citizen of India ; and

(ii) either resides or carries on his profession or is employed in West Bengal.

(2) If a person is elected as a member under more than one of the clauses of sub-section (1), he shall, within such period as may be prescribed by rule made in this behalf under section 33, inform the Registrar under which of the clauses he desires to be treated as elected and thereupon he shall be deemed to have been elected under that clause and the seat to which he was elected under any other clause shall be deemed to be vacant. Until he so informs the Registrar he shall not be entitled to act as a member ; and in the event of his failure to inform the Registrar within the prescribed period, every seat to which he was elected shall be deemed to be vacant.

5. If any of the electoral bodies referred to in ¹[clauses (b) to (e) of sub-section (1) of section 4] does not, by such date as may be prescribed by rule made in that behalf under section 33, elect a person to be a member of the Council, the ²[State Government] shall nominate a member in his place : and any person so nominated shall be deemed to be a member as if he had been duly elected by such body.

Nomina-
tion of
members
in default
of election.

¹These words were substituted for the words "clauses (c) to (h) of section 4" by sec. 8 of the Bengal Medical (Amendment) Act, 1953 (West Ben. Act. XVI of 1954).

²See foot-note 7 on page 467, ante.

(Sections 6—9.)

Disquali-
fications
for being
elected or
nominated
a member.

6. A person shall be disqualified for being elected or nominated a member of the Council if he—

(a) is not registered under this Act ; or

(b) has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ¹[State Government] ²[is] hereby empowered to make, if ³[it thinks] fit, in this behalf ; ⁴*

(c) is an undischarged insolvent ; ⁵[or]

⁶(d) is not a citizen of India either residing or carrying on his profession or employed in West Bengal.

7 * * * * *

Publica-
tion of
names of
members.

7. The name of every member elected or nominated ⁸[under sub-section (1) of section 4] or section 5 shall be published by the ¹[State Government] in the ²[Official Gazette].

Leave of
absence to
members.

8. The Council may permit any member to absent himself from meetings of the Council for any period not exceeding six months.

Cessation
of mem-
bership.

9. (1) A member of the Council shall be deemed to have vacated his seat—

(a) on his absence without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council, or

(b) on his absence out of India for any period exceeding six consecutive months, or

¹See foot-note 7 on page 467, *ante*.

²This word was substituted for the word "are" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "they think", *ibid*.

⁴The word "or" was omitted by sec. 8 (i) of the Bengal Medical (West Bengal Amendment) Act, 1950 (West Ben. Act XI of 1950).

⁵This word was inserted by sec. 8(4), *ibid*.

⁶Clause (d) was added by sec. 8(iii), *ibid*.

⁷The proviso was repealed by sec. 4 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

⁸These words were substituted for the words "under section 4" by sec. 2 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

⁹See foot-note 6 on page 467, *ante*.

of 1914.]

(Section 10.)

(c) on his becoming disqualified for election or nomination as a member for any of the reasons mentioned in section 6, ¹[or]

¹(d) on his name being removed under clause (a) of section 25 from the register of registered practitioners, or

¹(e) on his qualifying degree or diploma or certificate being revoked by the body which granted him such degree, diploma or certificate.

(2) On the occurrence of any vacancy referred to in sub-section (1), the President shall forthwith report the fact of such vacancy to the ²[State Government].

³10. (1) When the office of a member of the Council becomes vacant by his resignation or death or under sub-section (2) of section 4 or sub-section (1) of section 9,—

Filling of casual vacancies.

(a) if such member was nominated under clause (a) of sub-section (1) of section 4, a new member shall be nominated by the State Government within two months of the vacancy ;

(b) if such member was elected under clause (b), clause (c) or clause (d) of sub-section (1) of section 4, a new member shall be elected within two months of the vacancy in the manner provided in such clause ;

(c) if such member was elected under clause (e) of sub-section (1) of section 4, the candidate who secured at the election the maximum number of votes among candidates excepting all members, who were elected under that clause, shall, if not disqualified under section 6, be deemed to have been elected in the place of such member :

Provided that—

(i) where there are several candidates who secured such maximum number of votes, such one of them, as may be elected by lot in accordance with rule made in this behalf under section 33, shall be deemed to have been elected ;

(ii) if the member whose place becomes vacant was a Graduate or a Licentiate in medicine of the University of Calcutta, then in deciding which candidate secured such maximum number of votes, a candidate who is not a Graduate or a Licentiate in medicine of such University shall be excluded ;

¹This word "or" and clauses (d) and (e) were added by sec. 10 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²See foot-note 7 on page 467, *ante*.

³This section 10 was substituted for the former section 10 by sec. 11 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

(Sections 11, 11A.)

(iii) if the candidate, who would otherwise have been deemed to have been elected under this clause, is dead or refuses to serve as a member, a bye-election shall be held in the manner provided in clause (e) of sub-section (1) of section 4 to fill the vacancy.

(2) The term of office of a member, nominated or elected or deemed to have been elected, under sub-section (1), shall commence on such date as may be notified in this behalf by the State Government in the *Official Gazette* and shall continue for so long as the member whose place he fills would have been entitled to hold office if the vacancy had not occurred.

(3) No act of the Council or of any Committee of the Council or of their members shall be deemed to be invalid by reason only that the number of members in the Council at the time of the performance of such act was less than the number provided by section 4.

Term of
office of
members.

11. ¹(1) The ²term of office of a member of the Council nominated or elected under section 4 or nominated under section 5 shall commence on such date as may be notified in this behalf by the State Government in the *Official Gazette*.

³(2) Subject to the provisions of section 9 and section 10, the term of office of members shall be five years *plus* such period as may elapse between the period of five years aforementioned and the date notified in the notification under sub-section (1) next following such period of five years.

(3) Any member shall, if not disqualified for any of the reasons mentioned in section 6, be eligible for re-election or re-nomination at the end of his term of office.

President.

*11A. (1) The members of the Council shall, at their first meeting after the notification referred to in sub-section (1) of section 11, recommend in such manner as may be prescribed by rule made in this behalf under section 33, the names of three persons for the purpose of this sub-section; and the State Government shall nominate one of such persons to be the President of the Council.

(2) The President, if he is not already a member of the Council, shall be a member of the Council in addition to the members referred to in section 4.

¹This sub-section (1) was substituted for the original sub-section (1) by sec. 12 (a) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²Notwithstanding the commencement of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954) the West Bengal Council of Medical Registration as constituted immediately before the commencement of that Act and the members and the President thereof shall be deemed up to the 14th day of January, 1955 (inclusive) to be respectively the West Bengal Medical Council and the members and the President thereof (*vide* sec. 88(2) of West Ben. Act XVI of 1954).

³This sub-section (2) was substituted for the original sub-section ¹(2) by sec. 12(b) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

*Sections 11A, 11B and 11C were inserted by sec. 18, *ibid.*

of 1914.]

(Section 11B.)

(3) The State Government shall publish the name of the President in the *Official Gazette* and his term of office shall commence from the date of such publication.

(4) The President shall hold office for a period of five years, or until his successor is nominated, whichever is longer.

(5) The President—

(a) may at any time by writing under his hand addressed to the State Government resign his office,

(b) shall be deemed to vacate his office in all cases where a member is deemed to vacate his office under sub-section (1) of section 9.

(6) As often as the office of the President becomes vacant by his death or under sub-section (5), the Council shall at a special meeting to be called for the purpose within one month of the vacancy, recommend in such manner as may be prescribed by rule made in this behalf under section 33, the names of three persons for the purpose of this sub-section; and the State Government shall nominate another President from such persons.

(7) A President nominated to fill a vacancy, shall hold office for so long as the President whose place he fills would have been entitled to hold office if the vacancy had not occurred.

(8) The President shall perform such functions as may be prescribed by rule made in this behalf under section 33.

(9) Notwithstanding anything contained in the foregoing sub-sections, for a period of five years from the 15th day of January, 1955 and for such additional period as may expire until the nomination of a President under sub-section (1), the State Government shall appoint, as often as may be necessary, such person, as it thinks fit, to be the President. The provisions of sub-sections (2), (3), (4), (5), (7) and (8) shall apply to such President.

¹11B. (1) The members of the Council shall at their first meeting after the notification referred to in sub-section (1) of section 11, elect among themselves a Vice-President in such manner as may be prescribed by rule made in this behalf under section 33.

Vice-President.

(2) A Vice-President—

(a) may at any time by writing under his hand addressed to the State Government resign his office,

(b) shall be deemed to vacate his office if he ceases to be a member of the Council.

(3) As often as the office of the Vice-President becomes vacant by his death or under sub-section (2), the Council shall elect another member to be the Vice-President, in the manner prescribed by rule made in this behalf under section 33.

(4) The Vice-President shall perform such functions as may be prescribed by rule made in this behalf under section 33.

¹ See foot-note 4 on page 472, *ante*.

(Sections 11C, 12.)

Executive
Committee.

¹11C. (1) The members of the Council shall constitute among themselves the Executive Committee to perform such functions as may be delegated to it by the Council.

(2) The Executive Committee shall consist of the President and the Vice-President, *ex-officio*, and five other members elected by the Council.

(3) The President and the Vice-President of the Council shall be the President and the Vice-President, respectively, of the Executive Committee.

(4) The term of office of an elected member of the Executive Committee shall be two years from the date of his election but, subject to his being a member of the Council, he shall be eligible for re-election to the Executive Committee.

(5) No business shall be transacted at any meeting of the Executive Committee unless a quorum of three members be present.

(6) The Council may make regulations under sub-section (3) of section 33 for the conduct of business of the Executive Committee.

Meetings.

12. (1) The Council shall make regulations to regulate—

(a) the times and places at which their meetings shall be held.

(b) the issue of notices convening such meetings, ²*

(c) the conduct of business thereat ³[, and

(d) the appointment, powers and duties and procedure of special committees including special committees appointed under sub-section (2) of section 19 :]

Provided that—

(i) no business shall be transacted at any meeting ⁴[of the Council] unless a ⁵[quorum of seven members] be present ; and,

(ii) save as provided in section 17 and section 25, all questions arising at any meeting ⁴[of the Council] shall be decided by the votes of the majority of the members present and voting, or, in case of an equality of votes, by the casting vote of the President, or, in his absence, of the member presiding at the meeting.

¹See foot-note 4 on page 472, *ante*.

²The word "and" was omitted by sec. 7 (i) of the Bengal Medical (Amendment) Act, 1928 (Bon. Act III of 1928).

³The word "and" and clause (d) were inserted by sec. 7(ii), *ibid*.

⁴These words were inserted by sec. 7(iii), *ibid*.

⁵These words were substituted for the words "quorum of eight members" by sec. 14 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

of 1914.]

(Sections 13—16.)

(2) Until such time as the regulations referred to in sub-section (1) have come into operation, it shall be lawful for the President to summon a meeting at such time and place as to him shall seem expedient, by letter addressed to each member.

13. There shall be paid to the members of the Council such fees for attendance at meetings of the Council ¹[or of special committees] ²[or of the Executive committee], and such reasonable travelling expenses ³[for such attendance and for journeys undertaken in the discharge of their duties under this Act], as may from time to time be allowed by the Council and approved by the ⁴[State Government].

Payment of fees and travelling expenses to members.

14. (1) With the previous sanction of the ⁴[State Government], the Council—

Registrar and establishment for the Council.

(a) shall appoint a Registrar,

(b) may grant leave to such Registrar and appoint a person to act in his place, and

(c) shall pay to the Registrar and to the person (if any) appointed to act in his place such salary and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as they may consider necessary for the purposes of this Act, and shall pay them such salary and such allowances (if any) as the Council may determine.

(3) The Registrar shall act as Secretary to the Council.

(4) Every person appointed under sub-section (1) and sub-section (2) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

The Register of Registered Practitioners.

15. (1) The Council shall, as soon as conveniently may be after the commencement of this Act and from time to time as occasion may require, make orders for regulating the maintenance of a register of registered practitioners.

Orders by Council for maintenance of register of registered practitioners.

(2) The said register shall be kept in such form as may be prescribed by rule made under section 33.

16. (1) The Registrar shall, keep the register of registered practitioners in accordance with the provisions of this Act and of any orders made by the Council, and shall from time to time make all necessary alterations in the registered addresses or appointments, and the registered qualifications * * * * *, of such practitioners and erase the names of any practitioners who have died.

Maintenance of register by Registrar.

¹These words were inserted by sec. 8(i) of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

²These words were inserted by sec. 15 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

³These words were inserted by sec. 8(ii) of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

⁴See foot-note 7 on page 467, ante.

*The words "or titles" were omitted by sec. 16 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

(Sections 17, 18.)

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1), he may send through the post a letter to any registered practitioner, addressed to him according to his registered address or appointment, to inquire whether he has ceased to practise or whether his residence or appointment has been changed; and if no answer to any such letter is received within a period of six months from its despatch, the Registrar may erase the name of such registered practitioner from the register:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

Persons
possessing
any of the
qualifica-
tions
referred to
in the
schedule
entitled to
be
registered.

17. ¹[Every person who possesses any of the qualifications referred to in the schedule] shall, subject to the provisions hereinafter contained, and on payment of such fee as may be prescribed in this behalf by regulation made under section 33, be entitled to have his name entered in the register of registered practitioners:

Provided that the Council may refuse to permit the registration of the name of any person—

(a) who has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ²[State Government] ³[is] hereby empowered to make, if ⁴[it thinks] fit, in this behalf; or

(b) whom the Council, after due inquiry (at which an opportunity has been given to him to be heard in his defence and to appear either in person or by counsel, vakil, pleader or attorney, and which may, in the discretion of the President, be held *in camera*), have found guilty, by a majority of two-thirds of the members present and voting at the meeting, of infamous conduct in any professional respect.

Amend-
ment of
the
schedule.

18. If the Council are satisfied—

(a) that any * * * * * qualification certified by any University, Medical Corporation, examining body or other Institution ⁵[within India] is a sufficient guarantee that persons possessing such * * * * * qualification possess the knowledge and skill requisite for the efficient practice of medicine * * * * *, or

¹These words were substituted for the words "Every person referred to in the schedule" by sec. 17 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²See foot-note 7 on page 467, *ante*.

³See foot-note 2 on page 470, *ante*.

⁴See foot-note 3 on page 470, *ante*.

⁵The words "title granted or" were omitted by sec. 18(a)(4) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

⁶These words were inserted by sec. 18(a)(5), *ibid*.

⁷The words "title or" were omitted by sec. 18(a)(4), *ibid*.

⁸The words "surgery and midwifery" were omitted by sec. 18(a)(4), *ibid*.

of 1914.]

(Section 19.)

(b) that any ¹[qualification referred to in Article 2] of the schedule is not a sufficient guarantee as aforesaid, they may make a report to that effect to the ²[State Government], ³[which] may, if ⁴[it thinks] fit, thereupon direct, by notification in the ⁵[Official Gazette],—

(i) in case (a)—that the possession of such * * * qualification shall, subject to the provisions hereinafter contained and on payment of such fee as may be prescribed in this behalf by regulation made under section 33, entitle any person to have his name entered in the register of registered practitioners, or

(ii) in case (b)—that the possession of such * * * qualification shall not entitle any person to have his name entered in the said register ;

and the schedule shall thereupon be deemed to be altered accordingly.

19. ⁶[(1)] the Council shall have power to call on the ⁷[authorities of any examining body] included in or desirous of being included in the schedule—

(a) to furnish such reports, returns or other information as the Council may require to enable them to judge of the ¹⁰[standard of the examinations held by such body and of the efficiency of the instruction given in the Medical Colleges or Schools or Institutions where candidates for the examination by such body are trained] ; and

(b) to provide facilities to enable any member of the Council (deputed by the Council in this behalf) to be present at the examinations to be held by such ¹¹[examining body].

Power to Council to call for certain information from authorities of any examining body included or wishing to be included in the schedule.

¹These words were substituted for the words "title or qualification referred to in Article 8" by sec. 18(b) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²See foot-note 7 on page 467, ante.

³This word was substituted for the word "who" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 8 on page 470, ante.

⁵See foot-note 6 on page 471, ante.

⁶The words "title or" were omitted by sec. 18(c) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

⁷The words "title or" were omitted by sec. 18(d), *ibid*.

⁸Section 19 was re-numbered as sub-section (1) of that section and after that section as so re-numbered sub-section (2) was added by sec. 9 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

⁹These words were substituted for the words "governing body or authorities of any Medical College or School" by sec. 19() (i) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

¹⁰These words were substituted for the words "efficiency of the instruction given therein in medicine, surgery and midwifery" by sec. 19(a)(i), *ibid*.

¹¹These words were substituted for the words "College or School" by sec. 19(a)(ii), *ibid*.

(Sections 20—22.)

¹(2) The Council shall have power to inspect any ²[Medical College or School or Institution where candidates for examination by such examining body are trained] and may for this purpose appoint a Special Committee of not less than three or more than five members of the Council to inspect any ³[such Medical College or school or Institution] and submit a report in regard thereto to the Council.

Information to be furnished to Registrar with application for registration.

20. Every person who applies to have his name entered in the register of registered practitioners—

(a) must satisfy the Registrar that he is possessed of some ⁴* * * qualification referred to in the schedule as altered by notifications (if any) issued under section 18 ; and

(c) ⁵* * * must correctly inform the Registrar of the dates on which he obtained the ⁶* * * qualifications which entitle him to claim registration under this Act.

Entry of new qualifications in the register.

⁸21. (1) If any person whose name is entered in the register of registered practitioners obtains any medical qualification other than the qualification in respect of which he has been registered, he shall on payment of such fee as may be prescribed by regulation made in this behalf under section 33,—

(i) if such qualification be a qualification included in the schedule,—be entitled to have such qualification entered against his name in the register either in substitution for or in addition to any entry previously made ;

(ii) if such qualification be a qualification not included in the schedule,—be entitled to have such qualification entered against his name in the register as an additional qualification, provided such qualification is included in the list prepared under sub-section (2).

(2) The Council shall from time to time prepare a list of qualifications (not being qualifications included in the schedule) which may be approved by them for the purpose of this section.

Disposal of fees.

22. All fees received by the Council under this Act shall be applied for the purposes of this Act, in accordance with such rules as may be made by the ⁹[State Government] under section 33.

¹See foot-note 8 on page 477, *ante*.

²These words were substituted for the words "such Medical College or School" by sec. 19(b)(i) of the Bengal Medical (Amendment) Act, 1954 (West Bengal Act XVI of 1954).

³These words were substituted for the words "such institution" by sec. 19(b)(ii), *ibid*.

⁴The words "title or" were omitted by sec. 20(i), *ibid*.

⁵Clause (b) was omitted by sec. 20(ii), *ibid*.

⁶The words "if he is not registered under the Medical Acts—" were omitted by sec. 20(iii)(a), *ibid*.

⁷The words "titles or" were omitted by sec. 20(iii)(b), *ibid*.

⁸This section 21 was substituted for the original section 21 by sec. 21, *ibid*.

⁹See foot-note 7 on page 467, *ante*.

of 1914.]

(Sections 23—26.)

23. If any person is dissatisfied with any decision of the Registrar, refusing to enter the name ¹* * * or qualification of such person in the register of registered practitioners, he may, at any time within three months from the date of such decision, appeal to the Council, whose decision shall be final.

Appeal to Council from decision of Registrar.

24. Any entry in the register of registered practitioners which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased under an order in writing of the Council.

Erasure of fraudulent and incorrect entries.

25. The Council may direct—

(a) that the name of any registered practitioner—

Power to Council to direct removal of names from register, and re-entry of names therein.

(i) who has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ²[State Government] ³[is] hereby empowered to make, if ⁴[it thinks] fit, in this behalf ; or

(ii) whom the Council, after due enquiry ⁵[in the same manner as provided in clause (b) of section 17] have found guilty, by a majority of two-thirds of the members present and voting at the meeting, of infamous conduct in any professional respect, be removed from the register of registered practitioners ⁶[or that the practitioner be warned], and

(b) that any name so removed be afterwards re-entered in the register.

⁷25A. (1) A registered practitioner whose name has been removed from the register under clause (a) of section 25 shall forthwith surrender his certificate of registration to the Registrar, and the name so removed shall be published in the *Official Gazette*.

Effect of removal of name from register.

(2) If the name of a registered practitioner removed under clause (a) of section 25 is afterwards re-entered in the register as provided in clause (b) of that section the fact of such re-entry shall be published in the *Official Gazette* and the certificate of registration shall be returned to the registered practitioner by whom it was surrendered.

26. (1) An appeal shall lie to the ⁸[State Government] from every decision of the Council under section 17 or section 25.

Appeal to State Government from decision of Council.

¹The words "or any title" were omitted by sec. 22 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²See foot-note 7 on page 467, *ante*.

³See foot-note 2 on page 470, *ante*.

⁴See foot-note 8 on page 470, *ante*.

⁵These words were substituted for the words "as provided in clause (b) of section 17" by sec. 28(i) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

⁶These words were inserted by sec. 28(ii), *ibid*.

⁷Section 25A was inserted by sec. 24, *ibid*.

(Sections 27—29A.)

(2) Every appeal under sub-section (1) shall be preferred within three months from the date of such decision.

Bar to suits and other legal proceedings.

27. No suit or other legal proceeding shall lie in respect of any act done in the exercise of any power conferred by this Act on the ¹[State Government] or the Council ²[or any Committee of the Council] or the Registrar.

Notice of deaths, and erasure of names from register.

28. (1) Every Registrar of Deaths who receives notice of the death of any person whose name he knows to be entered in the register of registered practitioners shall forthwith transmit by post to the Registrar of the Council a certificate of such death, signed by him and stating particulars of the time and place of death.

(2) On receipt of—

(a) any such certificate, or

(b) any other reliable information regarding such death, the Registrar of the Council shall erase the name of the deceased person from the register.

Penalty on un-registered person representing that he is registered.

29. If any person whose name is not entered in the register of registered practitioners falsely pretends that it is so entered, or uses in connection with his name or title any words or letters ³[or number] representing that his name is so entered, he shall, whether any person is actually deceived by such representation or not, be punishable, on conviction by a Presidency Magistrate or a Magistrate of the first class, ⁴[with imprisonment which may extend to six months or with fine which may extend to five hundred rupees].

Penalty for failure to surrender certificate of registration.

⁵29A. (1) If any registered practitioner whose name has been removed from the register under clause (a) of section 25 fails without sufficient cause forthwith to surrender his certificate of registration, he shall be punishable with fine which may extend to fifty rupees.

(2) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by an order of the Council.

¹See foot-note 7 on page 467, *ante*.

²These words were inserted by sec. 10 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

³These words were inserted by sec. 25(a) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

⁴These words were substituted for the words "with fine which may extend to three hundred rupees" by sec. 25(b), *ibid*.

⁵Section 29A was inserted by sec. 26, *ibid*.

of 1914.]

(Sections 30—32.)

30. The expression "legally qualified medical practitioner," or "duly qualified medical practitioner," and all other expressions importing a person recognised by law as a medical practitioner or a member of the medical profession, as used in any ¹[Central, Provincial or State Act in force in West Bengal] shall be deemed to mean a medical practitioner registered under * * * * * this Act ; and no certificate required to be given by any medical practitioner or medical officer under any ¹[Central, Provincial or State Act in force in West Bengal] shall be valid unless such practitioner or officer is registered under * * * * * this Act.

Construction of references in Acts to medical practitioners.

³31. (1) No person other than a registered practitioner shall be competent to hold appointment as a physician, surgeon, obstetrician or other medical officer in any hospital (including a lying-in-hospital), asylum, infirmary, dispensary or other similar institution, which is supported entirely or partially by funds supplied by the State Government or by a local authority.

Unregistered persons not to hold certain appointments.

(2) Any appointment made in contravention of sub-section (1) shall be void and illegal.

⁴[*Medical List.*]

32. (1) The Registrar shall, ⁵[after the expiry of every period of three years], on or before a date to be fixed in this behalf by the Council, cause to be printed and published a correct list of the names for the time being entered in the register of registered practitioners, and setting forth—

Publication and use of Medical List.

(a) all names entered in the register, arranged in alphabetical order according to the surnames,

(b) the registered address or appointment of each person whose name is entered in the register, and

⁶(c) the qualifications of each such person represented by the abbreviations therefor and the year in which each such qualification was obtained.

¹The words "Central or Provincial Act in force in West Bengal" were originally substituted for the words "Bengal Act or any Act of the Central Legislature in force in Bengal" by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the words "Central, Provincial or State Act" were substituted for the words "Central or Provincial Act" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²The words "the Medical Acts or" were omitted by sec. 27 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

³This section 31 was substituted for the original sec. 31 by sec. 28, *ibid.*

⁴These words were substituted for the words "*Annual Medical List*" by sec. 29, *ibid.*

⁵These words were substituted for the words "in every year" by sec. 30 (a)(i), *ibid.*

⁶This clause (c) was substituted for the original clause (c) by sec. 30(a)(ii), *ibid.*

(Section 33.)

¹(1A). The Registrar shall on the expiry of every year (other than the year in which a list is printed and published under sub-section (1), on or before a date to be fixed in this behalf by the Council, cause to be printed and published a list supplementary thereto, containing additions and alterations in the register of registered practitioners, since the publication of the list under sub-section (1).

(2) Every Court shall presume that any person whose name is entered in ²[the latest list printed and published under sub-section (1) read with the latest list supplementary thereto, if any, printed and published under sub-section (1A)] is duly registered under this Act, and that any person whose name is not so entered is not registered under this Act :

Provided that, in the case of any person whose name does not appear in ³[the latest list printed and published under sub-section (1) read with the latest list supplementary thereto, if any, printed and published under sub-section (1A)], a certified copy, signed by the Registrar, of the entry of the name of such person in the register of registered practitioners shall be evidence that such person is registered under this Act.

Rules and Regulations.

Rules and
regula-
tions.

33. (1) The ⁴[State Government] may from time to time make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ⁴[State Government] may make rules—

⁵(a) to regulate elections under clauses (b), (c), (d) and (e) of sub-section (1) of section 4 ;

⁵(a1) the period to be prescribed under sub-section (2) of section 4 ;

⁵(a2) the manner of selection by lot referred to in proviso (i) to clause (c) of sub-section (1) of section 10 ;

⁵(a3) the manner of recommending names under sub-section (1) and sub-section (6) of section 11A, the election of the Vice-President referred to in sub-section (1) of section 11B, the manner of filling vacancies referred to in sub-section (3) of that section and the functions to be performed by the President and the Vice-President ;

¹Sub-section (1A) was inserted by sec. 30(b) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²These words were substituted for the words "the latest of such lists" by sec. 30 (c)(i), *ibid*.

³These words were substituted for the words "such list" by sec. 30(c)(ii), *ibid*.

⁴See foot-note 7 on page 467, *ante*.

⁵These clauses (a), (a1), (a2) and (a3) were substituted for the original clause (a) by sec. 31(2) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

of 1914.]

(Section 34 and the Schedule.)

- (b) to prescribe the form of the register of registered practitioners to be maintained under this Act ;
- (c) to regulate the application of fees under section 22 ; and
- (d) to regulate the procedure to be followed by the Council in—
 - (i) conducting any inquiry referred to in proviso (b) to section 17, or clause (a) of section 25 ; and
 - (ii) disposing of appeals from the decision of the Registrar preferred under section 23.

(3) In addition to the power conferred by ¹[sub-section (3) of section 11C, section 12 and sub-section (1) of section 21] the Council may, with the previous sanction of the ²[State Government] make regulations—

- (a) to prescribe the fees chargeable in respect of any registration under this Act ; and
 - (b) to regulate the keeping of accounts of such fees.
- (4) All such rules and regulations shall be published in the ³[Official Gazette].

34. [Saving for provisions of the Government of India Act, 1935.]—Rep. by paragraph (1) of Article 3 of, and the Schedule, to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

‘THE SCHEDULE.

Qualifications entitling to registration under this Act.

1. Qualifications specified in the First or the Second Schedule to the Indian Medical Act, 1933.

2. Qualifications specified in the undermentioned list :—

Name of the body or authority granting the qualification.	Description of the qualification.	Abbreviation of the qualification for registration.
1. The Governing Body of the State Medical Faculty of Bengal prior to 15th August, 1947.	(1) Member of the State Medical Faculty, Bengal.	M.M.F. (Bengal.).
	(2) Licentiate of the State Medical Faculty, Bengal.	L.M.F. (Bengal.).

¹These words were substituted for the words “section 12” by sec. 81(g) of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

²See foot-note 7 on page 467, *ante*.

³See foot-note 6 on page 467, *ante*.

⁴This schedule was substituted for the original schedule by sec. 82 of the Bengal Medical (Amendment) Act, 1954 (West Ben. Act XVI of 1954).

(The Schedule.)

Name of the body or authority granting the qualification.	Description of the qualification.	Abbreviation of the qualification for registration.
2. The Governing Body of the State Medical Faculty of West Bengal.	(1) Member of the State Medical Faculty, West Bengal.	M.M.F. (W.B.)
	(2) Licentiate of the State Medical Faculty, West Bengal.	L.M.F. (W.B.)
	(3) Licentiate in Medicine & Surgery (National) under article 6-A or 6-B of the Statutes of the State Medical Faculty, West Bengal.	L.M.S. (Nat.) (W.B.).
	(4) Certificate of qualification by the State Medical Faculty under article 6-C of the Statutes of the State Medical Faculty, West Bengal.	Certificate under article 6-C (W.B.)
	(5) Certificate of qualification by the State Medical Faculty under article 6-D or 6-E of the Statutes of the State Medical Faculty, West Bengal.	Certificate under article 6-D or 6-E (W.B.)
3. Bihar and Orissa Medical Examination Board.	Licensed Medical Practitioner.	L.M.P. (B. and O.)
4. Bihar Medical Examination Board.	Licensed Medical Practitioner.	L.M.P. (Bihar).
5. Orissa Medical Examination Board.	Licensed Medical Practitioner.	L.M.P. (Orissa).
6. State Board of Medical Examination, United Provinces.	Licensed Medical Practitioner.	L.M.P. (U.P.).
7. United Provinces (Uttar Pradesh) State Medical Faculty.	(1) Member of the State Medical Faculty, U. P.	M.S.M.F. (U. P.).
	(2) Licentiate of the State Medical Faculty, U.P.	L.S.M.F. (U.P.).
8. Medical Examination Board, Central Provinces (Madhya Pradesh).	Licensed Medical Practitioner.	L.M.P. (C.P. or M.P.).

of 1914.]

(The Schedule.)

Name of the body or authority granting the qualification.	Description of the qualification.	Abbreviation of the qualification for registration.
9. Board of Examiners, Medical College, Madras.	(1) Licensed Medical Practitioner.	L.M.P. (Madras).
	(2) Diploma in Medicine and Surgery.	D.M. & S. (Madras).
10. College of Physicians, and Surgeons, Bombay.	(1) Members of the College of Physicians and Surgeons, Bombay.	M.O.P.S. (Bom.).
	(2) Licentiate of the College of Physicians and Surgeons, Bombay.	L.C.P.S. (Bom.).
11. Assam Medical Examination Board.	Licensed Medical Practitioner.	L.M.P. (Assam).
12. Mysore University ...	Licensed Medical Practitioner.	L.M.P. (Mysore).
13. Punjab State Medical Faculty (prior to 15th August, 1947).	(1) Member of the State Medical Faculty, Punjab.	M.S.M.F. (Punjab).
	(2) Licentiate of the State Medical Faculty, Punjab.	L.S.M.F. (Punjab).
14. Andhra University ...	Licentiate in Medicine and Surgery, Andhra University.	L.M.S. (Andhra).
15. Osmania Medical College (prior to 1932).	Licentiate in Medicine and Surgery, Osmania Medical College.	L.M. & S. (Osmania).
16. Burma Medical Examination Board.	Licensed Medical Practitioner.	L.M.P. (Burma).
17. Rangoon University ...	Licentiate in Medicine and Surgery, Rangoon University.	L.M.S. (Rang.).
18. Governing Body of the State Medical Faculty of East Bengal.	Licentiate of the State Medical Faculty of East Bengal obtained prior to July, 1950.	L.M.F. (E. B.).

3. Qualifications granted prior to 1916 by the State Government to a person trained in a Government Medical College or School in India or Burma, declaring him to be qualified to practise Medicine, Surgery and Midwifery, or to perform the duties of a Military Assistant Surgeon, Hospital Assistant or Sub-Assistant Surgeon. Abbreviations for registration—L.M.P., M.A.S., H.A., C.H.A., S.A.S., or V.L.M.S., or diploma or certificate of the institution.

Bengal Act IV of 1915

[The Bengal Embankment (Sundarbans) Act, 1915].¹

REPEALED IN PART

.. Ben. Act XVI of 1946.

(14th April, 1915.)

An Act to extend to the Sundarbans certain enactments relating to Embankments.

WHEREAS it is expedient to extend to the Sundarbans certain enactments relating to embankments ;

55 and 56
Vict., c. 14.

AND WHEREAS the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Embankment (Sundarbans) Act, 1915.

Short title.

2. The following enactments are hereby extended to the Sundarbans, as excluded under section 1 of the Bengal Embankment Act, 1882, namely :—

Extension
of enact-
ments to
the Sunder-
bans.

Ben. Act
II of 1882.

(1) the following portions of the Bengal Embankment Act, 1873, namely, section 12, section 13, the proviso to section 21, sections 26, 27, 28 and 29, and Schedules B, C and D, subject to the amendments made in the said sections 12, 21 and 26 by the second paragraph of section 2 of the Bengal Embankment Act, 1882 ; and

Ben. Act
VI of 1878.

(2) The Bengal Embankment Act, 1882, except such portions thereof as have been repealed.

3. [Repeal.]—Rep. by the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1914, Pt. IV, page 94 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 896 and 897, and see the *Calcutta Gazette* of 1915, Pt. IVA, pages 11 and 26-28.

Bengal Act V of 1915

(The Bengal Decentralization Act, 1915).¹

REPEALED IN PART

.. { Act XXXVIII of 1920.
Ben. Act I of 1939.
Ben. Act XVI of 1946.

(27th October, 1915.)

An Act to decentralize and otherwise to facilitate the administration of certain enactments in force in Bengal.

WHEREAS it is expedient to decentralize and otherwise to facilitate the administration of certain enactments in force in Bengal ;

55 and 56
Vict., c. 14.

AND WHEREAS the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Decentralization Act, 1915. Short title.

2. [*Amendment of certain enactments.*—Rep. by sec. 2 and the Third Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946.)]

3. Any appointment, notification, order, scheme, rule, form or by-law made or issued by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority unless and, until superseded by an appointment, notification, order, scheme, rule, form or by-law made or issued by such new authority.

Saving of orders, etc., issued by previous authorities.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, of 1915, Pt. IV, pages 27 and 28 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 422-426 and 465 and 466.

[Ben. Act V of 1915.]

*(The Schedule.)***THE SCHEDULE.**

[*Rep. except the entires relating to the Calcutta Port Act, 1890, by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946.). Amendments incorporated in the principal Act.*]

Bengal Act III of 1918

[The Bengal (Aliens) Disqualification Act, 1918].

REPEALED IN PART

Act XXXVIII of 1920.

AMENDED

West Ben. Act II of 1951.

ADAPTED

- ... } (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
(b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
(c) The Adaptation of Laws
Order, 1950.

(20th March, 1918.)

An Act to disqualify certain persons from voting at elections of, or being elected or appointed as members of, or holding office in, local bodies in Bengal.

WHEREAS it is expedient to disqualify certain persons from voting at elections of, or being elected or appointed as Commissioners of the Corporation of Calcutta or of any other Municipality in Bengal, or as members of District or Local Boards or of Union Committees therein, and also to disqualify from holding office in any such body ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal (Aliens) Disqualification Act, 1918.

Short title, commencement and local extent.

(2) It shall come into force on such dates^a as the ^a[State Government] may direct by notification in the ^a[Official Gazette].

(3) It extends to the whole of ^a[West Bengal].

2. [Definition.]—Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

^aFor Statement of Objects and Reasons, see the *Calcutta Gazette* of 1918, Pt. IV, page 2 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 196 and 197, and 289-291.

^aThe 1st April, 1918, see Notification No. 827M., dated the 21st March, 1918, published in the *Calcutta Gazette* of 1918, Pt. IB, page 217.

^aThe words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

^aThese words were substituted for the words "*Calcutta Gazette*" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

^aThese words were substituted for the word "Bengal" by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act III of 1918.]

(Section 3.)

Persons disqualified from voting at elections of, or being members of, or holding office in, local bodies.

3. Notwithstanding anything contained in the Calcutta Municipal Act, 1899¹, the Bengal Municipal Act, 1884², and the Bengal Local Self-Government Act of 1885, or in any rule or by-law made under any of the said Acts, no person who is not a ³[citizen of India] shall be qualified to vote at the election of, or to be a candidate for election as a Commissioner of the Corporation of Calcutta or of any other Municipality in ⁴[West Bengal], or as a member of any District or Local Board or Union Committee therein or to hold the office of Chairman, Deputy Chairman or Vice-Chairman of any such body under the Calcutta Municipal Act, 1899¹, the Bengal Municipal Act, 1884², or the Bengal Local Self-Government Act of 1885, nor shall such person be appointed to be a Commissioner or a member or to hold any such office under any of the said Acts ; and

Ben. Act III of 1899.
Ben. Act III of 1884.
Ben. Act III of 1885.

if, on the date when this Act comes into force, any such person is holding any such office or is a Commissioner of the Corporation of Calcutta or of any other Municipality in ⁴[West Bengal] or a member of any District or Local Board or Union Committee therein under any of the said Acts he shall notwithstanding anything contained in those Acts, be deemed to have vacated his office or seat from such date, and such vacancy shall be filled up in the same manner as if it were caused by resignation duly accepted :

Provided that the ⁵[State Government] may, * * * * by notification in the ⁷[Official Gazette], exempt from the provisions of this section, with effect from the commencement of this Act or from such date as may be specified in the notification, any person or class of persons who are not ⁸[citizens of India].

¹The Calcutta Municipal Act, 1899, was repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), which Act was again repealed and re-enacted by the Calcutta Municipal Act, 1951 [West Ben. Act XXXIII of 1951].

²The Bengal Municipal Act, 1884 (Ben. Act III of 1884) was repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932).

³The words "citizen of India" and "citizens of India" were substituted for the words "British subject or a subject of an Acceding State" and "British subjects or subjects of an Acceding State" by sec. 2(a) and sec. 2(b), respectively of the Bengal (Aliens) Disqualification (West Bengal Amendment) Act, 1951 (West Ben. Act II of 1951). The words "an Acceding State" were originally substituted for the words "any State in India" by paragraph (1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴See foot-note 5 on page 491, *ante*.

⁵See foot-note 3 on page 491, *ante*.

⁷The words "with the approval of the Governor-General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

⁸See foot-note 4 on page 491, *ante*.

Bengal Act IV of 1918

(The Serampore College Act, 1918.)¹

ADAPTED ... { (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
(b) The Adaptation of Laws
Order, 1950.

(1st May, 1918.)

An Act to supplement, and in certain matters to supersede, the Royal Charter of Incorporation and the Statute and Regulation of the Serampore College.

Preamble.

WHEREAS on the 23rd day of February, 1827, the institution established in Serampore, Bengal, and known as the Serampore College, was incorporated by Royal Charter granted by his late Danish Majesty King Frederick the Sixth, with the powers and privileges in the said Royal Charter set forth, including the power of conferring upon the students of the said College degrees of rank and honour according to their proficiency in science ;

AND WHEREAS by Article VI of the Treaty of Purchase, dated the 22nd February, 1845, transferring Serampore to the British Government, it was provided that the rights and immunities granted to the Serampore College by the said Royal Charter, as translated and contained in Schedule I to this Act, should not be interfered with, but should continue in force in the same manner as if they had been obtained by a Charter from the British Government, subject to the general law of British India ;

AND WHEREAS Statutes and Regulations for the better government of the said College and management of its concerns, as contained in Schedule II to this Act, were, on the 12th day of June, 1833, made and established under the powers conferred by Article 4 of the said Royal Charter ;

AND WHEREAS, under the provisions of the said Royal Charter, the Council of the College consists of a Master or President and two or four members elected as provided in the said Statutes and Regulations, and the management of the College and its general order and government is vested in the Master and Council, and the said power of conferring degrees of rank and honour is vested in the first Council and their successors for ever ;

AND WHEREAS it is considered that in order to give effect, under the conditions now existing, to the intentions of his late Danish Majesty and of the founders of the said College, that is to say, to promote piety and learning, particularly among the native Christian population of India, the amendment of the constitution of the College, by the enlargement of the College on an inter-denominational basis, with power to delegate some of its functions, in manner hereinafter appearing, is required ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1918, Pt. IV, page 18 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 198 and 199 and 291-297 and 627-633.

(Sections 1—4.)

AND WHEREAS the present Council of the said College consists of the Reverend George Pearce Gould, M.A., D.D., Master and President, George Barclay Leechman, Esq., Sir George Watson Macalpine, LL.D., the Reverend Robert Forman Horton, M.A., D.D., and the Reverend George Howells, M.A., Ph.D., Principal of the College ;

AND WHEREAS it is deemed expedient by the Governor in Council, with the consent of the said Council of the Serampore College, that a Faculty and Senate be constituted for the said College in manner hereinafter appearing and that suitable standards be imposed in regard to any secular degrees that may hereafter be conferred by the said Council under the terms of the said Royal Charter ;

AND WHEREAS it is necessary to make provision for the above purposes by subjecting the said Royal Charter, Statutes and Regulations to an Act of the legislature under the general law of British India in accordance with the terms of the aforesaid Treaty ;

AND WHEREAS the previous sanction of the Governor General in Council has been obtained to the passing of this Act.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Serampore College Act, 1918.

Constitu-
tion of the
Council.

2. (1) The Council of the Serampore College as constituted by the Royal Charter of the 23rd day of February, 1827, shall be enlarged so as to consist of not less than five nor more than sixteen ordinary members, including the Master, as the Council may from time to time determine. The first Council constituted under this section shall include the present Master and President and the other present members.

(2) At least one-third of the members of the Council shall be members of the Baptist denomination.

(3) The Master shall be the President of the Council.

(4) The Principal of the College, if not an ordinary member, shall be an additional member of the Council *ex-officio* during his term of office as Principal of the College.

(5) Until otherwise determined by by-law made under section 14, three members of the Council shall form a quorum.

Resigna-
tion of
Members.

3. Any member of the Council may at any time resign his office by notice in writing to the Master, provided that no such resignation shall be deemed to take effect so long as the total number of members of the Council shall by reason thereof be less than five.

Election of
Master.

4. On any vacancy occurring in the office of Master the remaining members of the Council shall elect another person, whether one of their number or not, to fill his place.

of 1918.]

(Sections 5—10.)

5. The Council shall, within one year from the date of the commencement of this Act, constitute and appoint in the manner prescribed in section 6, a body to be known as the College Faculty.

The College Faculty.

6. (1) The Faculty shall consist of the Principal (who shall be its President) and such of the professors and other officials and functionaries of the College as may be appointed by the Council in accordance with by-laws made under section 14.

Constitution of the College Faculty.

(2) The Council shall from time to time prescribe and declare by order in writing the powers and duties of the Faculty, and may remove any member thereof.

7. The Council may delegate to the Faculty all or any of the powers and duties of the Council and Master, which concern only the internal management of the College and its general order and good government.

Delegation of Council's powers and duties.

8. The Council shall, within one year from the date of the commencement of this Act, constitute and appoint in the manner prescribed in section 9, a body to be known as the Senate of the College.

The Senate of the College.

9. The Senate shall consist of the Principal (who shall be convenor) and not less than twelve and more than eighteen persons as the Council may from time to time determine, to be appointed by the Council :

Constitution of the Senate.

Provided that—

(a) at least one and not more than three representatives of each of the following Christian denominations, viz., Anglican, Baptist, Congregational, Lutheran, Methodist, Presbyterian and Syrian, shall, as far as practicable, be members of the Senate ;

(b) at least two-thirds of the members shall be persons other than professors, officials or functionaries of the College ;

(c) not less than one-sixth of the members shall be members of the College Faculty.

10. (1) Subject to the provisions of clause 11 of the Statutes and Regulations of the College, which shall be deemed to apply to members of the Senate, each member of the Senate shall hold office for a period of five years, at the expiration of which period he shall retire, but he shall be eligible for re-appointment :

Term of office of members of the Senate.

Provided that the Principal shall not, during the term of his office as Principal, be subject to retirement, unless he becomes disqualified under the provisions of clause 11 of the Statutes and Regulations.

(2) Any member of the Senate may, by notice in writing to the Master, resign his membership at any time.

[Ben. Act IV*(Sections 11—14.)***Duties of
the Senate.**

11. The Senate shall frame courses of study and make rules for the conduct of examinations, and shall, subject to the control, of the Council, determine the qualifications for degrees and diplomas and do and perform all other matters and things necessary or proper for or relating to the determination of the eligibility of candidates for degrees, diplomas and certificates to be conferred by the Council.

**Power of
the Senate
to make
rules and
regulations.**

12. Subject to the provisions of this Act, the Senate shall make rules and regulations for the convening of its meetings and for the proper conduct of its business.

**Granting
of degrees.**

13. If, at any time, the Council shall intend to grant degrees in any branch or branches of knowledge and science other than theology, such degrees shall be confined to students who shall have received regular instruction at the Serampore College ; and before the Council proceeds to grant such degrees, it shall satisfy ¹[the State Government] as to the adequacy—

- (1) of the establishment and equipmet of the College ;
- (2) of the academic standard to be maintained ; and
- (3) of the financial provision made therefor :

Provided that the said Government, on ceasing to be so satisfied, may withdraw ²[its] approval of the granting of such degrees.

**Power of
the Council
to make
by-laws.**

14. Subject to the provisions of this Act and of the said Royal Charter, Statutes and Regulations, so far as they are not inconsistent therewith, the Council shall make by-laws providing for and regulating the following matters, namely :—

- (a) the convening of meetings of the Council ;
- (b) the quorum to be required at meetings of the Council and the conduct of business at such meetings ;
- (c) the appointment of members of the Council, Faculty and Senate ;
- (d) the duties to be performed by the Faculty under the direction and control of the Council ;
- (e) the conferring of degrees, diplomas and certificates on the recommendation of the Senate ;

¹The words "Provincial Government" were originally substituted for the words "the Government as defined in section 2(b) of the Indian Universities Act, 1904, in relation to the University of Calcutta" by para. 8 and Sch. IV, to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²This word was substituted for the word "their" by paragraph 5(3) of the Government of India (Adaptation of Indian Laws Order, 1937.

of 1918.]

(Section 15 and Schedule I.)

- (f) the terms and tenure of appointments, duties, emoluments, allowances and superannuation allowances of the Principal, Professors, Fellows, Tutors and other officers of the College and of its servants ;
- (g) the finances and accounts of the College and the investment of its funds ;
- (h) the person or persons by whom, and the manner and form in which, contracts by or on behalf of the College may be entered into, varied or discharged, and deeds, agreements, contracts, cheques, and other negotiable instruments and documents may be signed or executed on behalf of the College, and minutes and proceedings of meetings of the Council, Faculty or Senate may be authenticated or evidenced so as to bind the College and be receivable in evidence in accordance with the provisions of the Indian Evidence Act, 1872 ;
- (i) the custody and use of the common seal ; and
- (j) generally all such other matters as may be required or authorized under this Act and the said Royal Charter, Statutes and Regulations, so far as they are not inconsistent with this Act.

I of 1872,

15. The provisions of the said Royal Charter and of the Statutes and Regulations made thereunder, so far as they are contrary to or inconsistent with any of the terms of the Act, shall be deemed to be superseded from the date of the commencement of this Act :

Effect of Act.

Provided that nothing in this Act shall render invalid any acts performed, duties imposed or liabilities incurred prior to the date on which this Act comes into force in accordance with the terms of the said Royal Charter, and of the Statutes and Regulations made thereunder.

SCHEDULE I.

[See Preamble and sections 2 (1), 14 and 15.]

Charter of incorporation of the Serampore College.

WE Frederick the sixth, by the Grace of God King of Denmark, the Vendors and Gothers, Duke of Slesvig Holsten, Storman, Ditmarsken, Limesborg and Oldenburg, by these writings make known and publicly declare, that whereas William Carey and Joshua Marshman, Doctors of Divinity, and John Clark Marshman, Esq., inhabitants of our town of Frederiksnagore (or

(Schedule I.)

Serampore) in Bengal, being desirous of founding a College to promote piety and learning particularly among the native Christian population of India, have to secure this object erected suitable buildings and purchased and collected suitable books, maps, etc., and have humbly besought us to grant unto them and such persons as shall be elected by them and their successors to form the Council of the College in the manner to be hereafter named, our Royal Charter of Incorporation that they may the more effectually carry into execution the purposes above-mentioned :—We being desirous to encourage so laudable an undertaking have of our special grace and free motion ordained, constituted, granted and declared, and by these presents We do for ourselves, our heirs and successors ordain, constitute, grant and declare :

1. That the said William Carey, Joshua Marshman and John Clark Marshman, and such other person or persons as shall successively be elected and appointed the Council of the said College, in the manner hereafter mentioned, shall by virtue of these presents be for ever hereafter one body politic and incorporate by the name of the Serampore College for the purposes aforesaid to have perpetual succession and to have a common seal and by the said name to sue and to be sued, to implead and be impleaded, and to answer and be answered unto in every court and place belonging to us, our heirs and successors.

2. And We do hereby ordain, constitute and declare that the persons hereby incorporated and their successors shall for ever be competent in law to purchase, hold and enjoy for them and their successors any goods and chattels whatsoever and to receive, purchase, hold and enjoy, they and their successors, any lands, tenements or hereditaments whatever and that they shall have full power and authority to sell, exchange or otherwise dispose of any real or personal property to be by them acquired as aforesaid, unless the sale or alienation of such property be specially prohibited by the donor or donors thereof, and to do all things relating to the said College or Corporation in as ample a manner or form as any of our liege subjects, or any other body politic or corporate in our said kingdom or its dependencies may or can do.

3. And We do hereby ordain, grant and declare that the number of Professors, Fellows or Student Tutors and Students shall be indefinite and that the said William Carey, Joshua Marshman and John Clark Marshman shall be the first Council of the said College, and that in the event of its appearing to them necessary during their lifetime, or in the case of the death of any one of the three members of the said first Council, the survivors or survivor shall and may under their respective hands and seals appoint such other person or persons to be members of the Council of the College, and to succeed each other so as to

of 1918.]

(Schedule I.)

become members of the said Council in the order in which they shall be appointed, to the intent that the Council of the said College shall for ever consist of at least three persons.

4. And We do hereby further ordain, grant and declare, that for the better government of the said College and the better management of its concerns, the said William Carey, Joshua Marshman and John Clark Marshman, the members of the first Council, shall have full power and authority for the space of ten years from the date of these presents, to make and establish such Statutes as shall appear to them useful and necessary for the government of the said College, in which Statutes they shall define the powers to be entrusted to their successors, to the Professors, the Fellows or Student Tutors and the other Officers thereof, and the duties to be performed by these respectively for the management of the estates, lands, revenues and goods—and of the business of the said College, and the manner of proposing, electing, admitting and removing all and every one of the Council, the Professors, the Fellows or Tutors, the officers, the students and the servants thereof, and shall make and establish generally all such other Statutes as may appear to them necessary for the future good government and prosperity of the said College, provided that these Statutes be not contrary to the laws and Statutes of our realm.

5. And We do hereby further ordain, grant and declare that the Statutes thus made and established by the said three members of the first Council and given or left in writing under their respective hands, shall be valid and in full force at the expiration of ten years from the date of these presents, so that no future Council of the College shall have power to alter, change or vary them in any manner whatever, and that the Statutes shall for ever be considered the constitution of the said College. And We do hereby appoint and declare that these Statutes shall be made and established by the said William Carey, Joshua Marshman and John Clark Marshman alone, so that in case either of them should die before the expiration of ten years, the power of completing or perfecting these Statutes shall devolve wholly on the survivors or survivor; and that in case all three of them should die before the expiration of ten years, the Statutes which they have left in writing under their hands, or under the hand of the last survivor among them, shall be considered "The Fundamental Statutes and Constitution of Serampore College", incapable of receiving either addition or alteration, and shall and may be registered in our Royal Court of Chancery as "The Statutes and Constitution of Serampore College".

6. And We do hereby further appoint, grant and declare that from and after the completion of the Statutes of the said College in the above said time of ten years, the said Council of the College shall be deemed to consist of a Master or President and two or four members who may be Professors or otherwise as the Statutes may direct so that the said Council shall not contain less than three, nor more than five persons, as shall be defined

(Schedule I.)

in the Statutes. The Council shall ever be elected as the Statutes of the College may direct, yet the said Master or President shall always previously have been a member of the College ; and upon the decease of the said Master or President, the Council of the said College shall be unable to do any act or deed until the appointment of a new Master or President, save and except the appointment of such a Master.

7. And We further appoint, grant and declare that the said William Carey, Joshua Marshman and John Clark Marshman, the members of the first Council, and their successors for ever, shall have the power of conferring upon the students of the said College, native Christians as well as others, degrees of rank and honour according to their proficiency in as ample a manner as any other such College, yet the said Serampore College shall only have the power of conferring such degrees on the students that testify their proficiency in Science, and no rank or other special right shall be connected therewith in our dominions. And We do hereby further appoint, grant and declare, that after the expiration of the said ten years, the said Council of the College and their successors for ever shall have power to make and establish such orders and by-laws as shall appear to them useful and necessary for the government of the said College, and to alter, suspend or repeal those already made, and from time to time make such new ones in their room as shall appear to them most proper and expedient provided the same be not repugnant to the Statutes of the College or the laws of our realm, and that after the expiration of these ten years any member of the Council shall have power to move the enactment of any new by-law, or the alteration, suspension or repeal of any existing one provided notice of such motion shall have been delivered in writing to the Master and read from the Chair at one previous meeting of the Council of the said College, but that no such motion shall be deemed to have passed in the affirmative, until the same shall have been discussed and decided by ballot at another meeting summoned especially for that purpose, a majority of the members then present having voted in the affirmative ; and in this as in all other cases, if the votes be equal, the Master or President shall have the casting vote.

Given at our Royal Palace in Copenhagen on the twenty-third day of February in the year of our Lord one thousand eight hundred and twenty-seven, in the nineteenth year of our reign.

Under our Royal Hand and Seal.
FREDERICK R.

of 1918.]

(Schedule II.)

SCHEDULE II.

[See Preamble and sections 10 (1), 14 and 15.]

Statutes and Regulations of the Serampore College.

June 12th, 1833.

1. Article the Third of the Charter granted by His Danish Majesty, having authorised the first Council of Serampore College in their life-time to nominate under their hand and seal such other person or persons for colleagues or successors as may to them appear most proper so that the Council shall always consist of at least three persons, their successors in the Council shall be competent in like manner to nominate in their life-time under their separate hand and seal such person or persons as they may deem most proper to fill vacancies then existing or which may occur on their demise ; members thus nominated and chosen shall succeed to the Council in order of their nomination.

2. It being fixed in the Charter that the Council must consist of the Master or President and at least two, but not more than four members, and that on the demise of the Master no act shall be done until another be elected, the Master and Council for the time being shall appoint the next Master under their separate hand and seal. If on the demise of a Master no one be found thus appointed under the hand and seal of a majority of the Council, the senior member of the Council shall succeed as Master.

3. The Charter having given the casting vote to the Master, in all cases when the votes are equal the casting vote shall lie with the Master, and if there be no Master, it shall lie with the Senior Member of the Council.

4. Learning and piety being peculiar to no denomination of Christians, one member of the Council may at all times be of any other denomination besides the Baptist to preserve the original design of the Institution. However if on the election of a Master a number of the Council be equally divided, that part which is entirely of the Baptist denomination shall have the casting vote, whether it includes the Master or not.

5. The management of the College, including its revenues and property, the choice of the Professor and Tutors, the admission of students, the appointment of all functionaries and servants and the general order and government of the College, shall ever be vested in the Master and the Council. The Master shall see that the Statutes and Regulations of the Council be duly carried into effect, and take order for the good government of the College in all things. His signature is necessary to the validity of all deeds, instruments, documents and proceedings.

(Schedule II.)

6. "The first Council and their successors for ever" being authorized by the Charter "to confer such degrees of rank and honour as shall encourage learning" in the same manner as other Colleges and Universities, they shall from time to time confer degrees in such branches of Knowledge and Science as may be studied there, in the same manner as the Universities in Denmark, Germany and Great Britain. In doing this the Master and Council shall *ad libitum* call in the aid of any or all the Professors of Serampore College. All such degrees shall be perfectly free of expense to the person on whom they may be conferred, whether he be in India, Europe or America.

7. No oaths shall be administered in Serampore College either to the Members of the Council, the Professors and Tutors, or the students. In all cases a solemn promise, duly recorded and signed by the party, shall be accepted instead of an oath.

8. Marriage shall be no bar to any office or situation in Serampore College, from that of the Master to that of the lowest student.

9. The salaries of the Professors and Tutors in Serampore College shall be appointed and the means of support for all functionaries, students and servants be regulated by the Council in such manner as shall best promote the objects of the Institution.

10. It is intended that neither the Master nor any member of the Council in general shall receive any salary. But any Master who may not previously reside in the College shall have a residence there free of rent for himself and his family. And if the Council shall elect any one in Europe or in America, whom they deem eminent for learning and piety, a member of the Council, with a view to choosing him Master should they on trial deem him worthy, the Council shall be competent to appoint him such salary as they may deem necessary, not exceeding, however, the highest given to a Professor.

11. As the founders of the College deem the belief of Christ's Divinity and Atonement essential to vital Christianity, the promotion of which is the grand object of this institution, no one shall be eligible to the College Council or to any Professorship who is known to oppose these doctrines, and should any one of the Professors or any member of the Council unhappily change his views after his election as to oppose these fundamental doctrines of Christianity, on this being clearly and decidedly proved from his teaching or his writings, he shall vacate the office he previously held. But every proceeding of this nature on the part of the College Council shall be published to the Christian world with the proofs on which it may rest, as an Appendix to the succeeding Report.

of 1918.]

(Schedule II.)

12. Members of the Council are eligible from among the Professors of the College, or from among any in India, Europe, or America, whom the College Council may deem suitable in point of learning, piety, and talent.

13. Students are admissible at the discretion of the Council from any body of Christians, whether Protestant, Roman Catholic, the Greek, or the Armenian Church ; and for the purpose of study, from the Musalman and Hindu youth, whose habits forbid their living in the College. No caste, colour, or country shall bar any man from admission into Serampore College.

14. Expulsion shall be awarded in cases of open immorality, incorrigible idleness, neglect of the College Statutes and Regulations, or repeated disobedience to the officers of the College.

15. Any person in India, Europe or America shall be at liberty to found any Professorship, or to attach to Serampore College any annual exhibition or prize for the encouragement of learning in the same manner as in Universities of Great Britain, regulating such endowment according to their own will ; and it shall be the duty of the College Council to carry such benefactions into effect in strict consonance with the will of the donors as far as shall be consistent with the Statutes of the College.

16. It shall be lawful for the first Council of the College or their successors to make and rescind any by-laws whatever, provided they be not contrary to these Statutes.

17. The Charter having declared that the number of the Professors and Students in Serampore College remains unlimited, they shall be left thus unlimited, the number to be regulated only by the gracious providence of God and the generosity of the public in India, Europe and America.

Bengal Act No. I of 1919
(THE CALCUTTA HACKNEY-CARRIAGE ACT, 1919.)

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Bengal Act No. I of 1919

(The Calcutta Hackney-carriage Act, 1919.)¹

REPEALED IN PART	Ben. Act I of 1939.
AMENDED	West Ben. Act XXXVI of 1948.
ADAPTED	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(15th January, 1919.)

An Act to consolidate and amend the law relating to hackney-carriages and palanquins and to make certain provisions with regard to rickshaws in Calcutta.

WHEREAS it is expedient to amend the law relating to hackney-carriages and palanquins and to make certain provisions with regard to rickshaws in Calcutta ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Calcutta Hackney-carriage Act, 1919 ;

Short title,
commen-
cement
and extent.

(2) It shall come into force on such date² as the ³[State Government] may, by notification, direct ; and

(3) It shall apply in the first instance only to Calcutta :

⁴Provided that nothing in this Act shall apply in Calcutta to any type of vehicle the driving or use of which has been prohibited with the previous sanction of the State⁵ Government by the Commissioner of Police under section 61A of the Calcutta Police Act, 1866, and section 38A of the Calcutta Suburban Police Act, 1866.

Ben. Act
IV of 1866.
Ben. Act
II of 1866.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1918, Pt. IV, page 48 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 297-299 and 810-816 and 1026-1027 and 1167-1188.

²The 15th July 1919, see Notification No. 1581 M., dated the 17th June, 1919, published in the *Calcutta Gazette* of 1919, Pt. IB, page 118.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴This proviso was added by sec. 2 of the Calcutta Hackney-carriage (Amendment) Act, 1948 (West Ben. Act XXXVI of 1948).

⁵The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act I

(Chapter 1.—Preliminary.—Sections 2, 3.)

Explanation.—In this proviso,—

- (1) “Calcutta” means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866 ; and

Ben. Act
IV of 1866.Ben. Act
II of 1866.

- (2) “streets” and “public places” have the same meanings as in the Calcutta Police Act, 1866, and the Calcutta Suburban Police Act, 1866.

Further
provisions
as to
extent.

2. The ¹[State Government] may, by notification,—

- (a) extend this Act, or any portion thereof, to any other town or local area ; or
- (b) exclude from, or include in, Calcutta, or any other town or local area to which this Act is extended under clause (a), any local area in the vicinity of the same and defined in the notification :

Provided that no notification under this section shall be published in respect of any area included in a Military Cantonment without the previous sanction of the ²[Central Government :]

Provided also that, before finally publishing any notification under this section the ¹[State Government] shall publish a draft of the same in such manner as ³[it] may think fit, and any rate-payer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the ¹[State Government] within six weeks from its publication and the ¹[State Government] shall take such objection into consideration.

Repeal.

3. (1) The Calcutta Hackney-carriage Act, 1891, is hereby repealed.

Ben. Act
II of 1891.

(2) This repeal shall not affect the validity of anything done or suffered, or of any right, title, obligation or liability which may have accrued under the said Act ; and all registrations made, licenses issued, penalties incurred, and other things duly done under the said Act shall, so far as they are consistent with this Act, be deemed to have been respectively made, issued, incurred or done hereunder.

(3) All proceeding now pending, which may have been commenced under the said Act, shall be deemed to be commenced under this Act.

¹ See foot-note 8 on page 509, *ante*.

² These words were substituted for the words “Governor-General in Council” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ This word was substituted for word “they” by paragraph 5(2), *ibid*.

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(Chapter 1.—Preliminary.—Section 4.)

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "bearer" when used with reference to rickshaws includes any person employed to draw or push a rickshaw ¹[or, where the rickshaw is a cycle-rickshaw, any person employed to actuate the cycle-rickshaw] ;

(2) "Calcutta" means ²[subject to the provisions of the proviso to sub-section (3) of section I and] subject to the exclusion or inclusion of any local area by notification under clause (b) of section 2, the area described in Schedule I to the Calcutta Municipal Act, 1899³ ;

Ben. Act
III of
1899.

(3) "the Commissioner of Police" means the officer appointed under section 4 of the Calcutta Police Act, 1866 ;

Ben. Act
IV of
1866.

(4) "hackney-carriage" means any wheeled vehicle, drawn by horses and used for the conveyance of passengers, which is kept, offered or plies for hire by the hour or day or according to distance ;

(5) "horse" includes male and pony ;

(6) "notification" means a notification published in the ⁴[*Official Gazette*] ;

(7) "palanquin" means a vehicle for the conveyance of passengers which is carried by men ;

(8) "rickshaw" means a two-wheeled vehicle for the conveyance of passengers which is drawn by a man or men ¹[and includes a three-wheeled vehicle for the conveyance of passengers, ordinarily known as a cycle-rickshaw, which is actuated by a man by means of a pedal-cycle mechanism] ; and

(9) "stage-carriage" means any hackney-carriage, the passengers in which pay or are charged separate and distinct fares, or pay or are charged at the rate of separate and distinct fares, for their respective place or seats therein or conveyance thereby.

¹These words were inserted by sec. 8(a) of the Calcutta Hackney-carriage (Amendment) Act, 1948 (West Ben. Act XXXVI of 1948).

²These words, brackets and figures were inserted by sec. 8(b), *ibid*.

³Bengal Act III of 1899 was repealed and re-enacted by the Calcutta Municipal Act, 1928 (Ben. Act III of 1928), which Act has again been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act, XXXIII of 1951) and this reference should now be construed as a reference to the last mentioned Act.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1987.

[Ben. Act I]

(Chapter II.—Registration of Hackney-carriages.—Sections 5—9.)

CHAPTER II.

REGISTRATION OF HACKNEY-CARRIAGES.

Hackney-carriages to be registered annually.

5. Every hackney-carriage in Calcutta shall be annually registered by a Registering Officer, on such date as the Commissioner of Police may direct.

Duties of Registering Officer.

6. (1) The Registering Officer shall be a Deputy Commissioner of Police specially appointed by the ¹[State Government] for this purpose, and he shall keep a register in which he shall enter every hackney-carriage under the class prescribed therefor by by-law made under section 71.

(2) Every act, matter or thing done by the Registering Officer, under or by virtue of this Act, shall be subject to the control of the Commissioner of Police.

Power to Registering Officer to delegate his functions.

7. The Registering Officer may, with the sanction of the Commissioner of Police by general or special order in writing, delegate to any police-officer, not below the rank of sergeant, all or any of the powers and duties conferred or imposed upon the Registering Officer by this Act or any by-law made thereunder, except those conferred or imposed upon him by sections 8, 9, 12, 24, 25, 30, 32 and 61.

Procedure for registration.

8. (1) Any person who is desirous of registering a hackney-carriage, shall apply to the Registering Officer, stating the class in which he desires that the carriage may be registered, and shall submit the carriage for the inspection of the Registering Officer.

(2) The Registering Officer shall satisfy himself that the municipal tax imposed upon such carriage for the current half-year has been paid, and decide whether the carriage is fit to be registered in the class applied for, and shall register it in that class or refuse to grant the application.

(3) The person in whose name any carriage is registered shall be deemed to be the owner of such carriage for the purposes of this Act.

License for carriage.

9. (1) The Registering Officer shall, at the time of registration, upon payment of such fee as may be fixed by by-law made under clause (f) of section 71, deliver a license, duly signed by him, to the owner of every hackney-carriage.

(2) Such license shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which the carriage is registered.

¹See foot-note 8 on page 509, *ante*.

of 1919.]

(Chapter II.—Registration of Hackney-carriages.—Sections 10—13.)

10. The following particulars shall be entered in the register, and shall be specified in the license to be given to the owner :—

Particulars of register and license.

- (a) the class, and the number assigned to the carriage in the register ;
- (b) the name and residence of the owner, the description of the carriage, and the place where such carriage is to be kept ;
- (c) the number and description of horses to be employed in drawing such carriage ;
- (d) the number of passengers the carriage is licensed to carry ;
- (e) the date on which the license was granted ; and
- (f) such other particulars as may be prescribed by by-law made under section 71 ;

and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

11. (1) The owner of every hackney-carriage registered under this Act shall, on receipt of a notice in writing in this behalf, produce the carriage before the Registering Officer, for inspection, at such time as may be specified in the notice within two weeks after the expiration of six months from the date of every such registration.

Production of carriages for inspection half-yearly.

(2) If the owner of any such carriage fails to produce the same for inspection in accordance with the provisions of sub-section (1), he shall be liable to a fine not exceeding five rupees for every day during which, after the expiry of the period specified in sub-section (1) and before the carriage is produced for inspection, the carriage is used as a hackney-carriage, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

12. The Registering Officer may cancel or suspend, for such period as he thinks fit, the registration of any carriage and the license granted to the owner under this Act, whenever it appears to him that such carriage is unfit for public use, or the horse used therewith is not licensed for that class of carriage, or the harness used with such horse is unfit for public use.

Registration of carriage and owner's license may be cancelled or suspended.

13. (1) Whenever any change takes place in the ownership of a hackney-carriage, if the person to whom such carriage is transferred desires to use it as a hackney-carriage, he shall, before so using it, give to the Registering Officer notice in writing of such transfer.

Notice to be given of change of ownership.

(2) Every such notice shall contain the particulars specified in clauses (a), (b) and (c) of section 10.

*(Chapter II.—Registration of Hackney-carriages.—
Sections 14—16.)*

(3) If any such person, before giving such notice as aforesaid, uses such carriage as a hackney-carriage, he shall be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

(4) Every owner of a hackney-carriage registered under this Act shall, within fourteen days of the transfer of such carriage to another person, or of the discontinuance of the use of the carriage as a hackney-carriage, give notice thereof to the Registering Officer, in the case of a transfer stating the name and residence of the transferee.

(5) If any such owner fails to give notice in accordance with the provisions of sub-section (4), he shall be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Notice to be given of change of owner's residence or place where carriage is kept.

14. (1) Whenever the owner of a hackney-carriage registered under this Act changes his residence or the place where such carriage is kept, he shall, within one week from the date of such change, give to the Registering Officer a notice in writing thereof.

(2) Every such owner who neglects to give such notice shall be liable, for every such offence, to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Change of ownership or residence to be entered in register.

15. The Registering Officer, on receiving a notice under section 13, sub-section (1) or (4), or section 14, sub-section (1), or after a conviction under section 13, sub-section (3) or (5), or section 14, sub-section (2), shall make the necessary alteration in the register and in the license.

Penalty for using un-registered carriage.

16. (1) If any hackney-carriage is used as such without having been duly registered under this Act, the owner of such carriage shall be liable to a fine not exceeding one hundred rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding three months.

(2) Any police-officer, or any person duly authorized by the Commissioner of Police in that behalf, may seize such carriage together with the horses and harness thereof and remove the same to a police-station :

Provided that, if it be proved on arrival at the police-station or afterwards that any horse so removed has been duly registered under this Act with its harness, that horse and harness shall be released forthwith :

of 1919.]

(Chapter III.—Plate on Hackney-carriage.—Sections 17—19.)

Provided also that any carriage so removed shall be released on the owner thereof furnishing security to the satisfaction of the officer in charge of the police-station for the production of the carriage when required.

(3) Any carriage seized under sub-section (2) which is not released under the second proviso thereto, may be detained at the police-station or sent to the Registration Office and detained there, until any fine imposed by the Magistrate has been paid.

(4) If the hackney-carriage so seized be not claimed and if any fine imposed be not paid, together with any costs or charges incurred, within fifteen days of such seizure or imposition of such fine, respectively, such carriage may be sold by auction, after previous advertisement of such auction, and the sale-proceeds applied to the payment of the fine and all costs and charges incurred on account of the detention and sale.

(5) The surplus, if any, if not claimed by the owner within a further period of one month, shall be credited and applied in the same manner as fees and fines realized under this Act.

CHAPTER III.

PLATE ON HACKNEY-CARRIAGE.

17. Upon the registration of any hackney-carriage, the Registering Officer shall cause to be affixed on some conspicuous part of the outside of such carriage a plate, bearing the class and the number of such carriage in the register and the number of passengers which it is licensed to carry.

Plate to be affixed outside carriage.

18. If any hackney-carriage is let, used or plies for hire without having a proper plate affixed thereto under this Act, the owner thereof shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Penalty for using carriage without plate.

19. If, during the year of registration, the words or figures on any plate affixed to a hackney-carriage become indistinct or obliterated, or if the plate is lost or stolen, the owner of such carriage shall produce the carriage before the Registering Officer and, after proving the loss of the plate or on delivering the defective plate, to the Registering Officer, as the case may be, shall be entitled to have a new plate affixed upon payment of a fee of eight annas :

Owner entitled to new plate on loss or obliteration of former

Provided that if any plate, in lieu of which a new plate has been affixed under this section, be afterwards recovered, the same shall forthwith be delivered to the Registering Officer.

[Ben. Act I]

(Chapter III.—Plate on Hackney-carriage.—Sections 20—23.)

Penalty for using obliterated plate or for failing to deliver lost plate when recovered.

20. Every owner of a hackney-carriage registered under this Act who uses or permits to be used any plate after the writing thereon has become indistinct or obliterated,

and every person into whose possession any plate which has been lost or stolen comes, and who refuses or wilfully neglects for three days to deliver the same to the Registering Officer as required by the proviso to section 19,

shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Plate to be delivered on expiration of registration.

21. (1) Upon the expiration or other determination of the registration of a hackney-carriage, the owner of such carriage shall cause the plate affixed thereto under this Act to be delivered to the Registering Officer.

(2) Any person who, after the expiration of the period aforesaid, wilfully neglects for seven days to deliver the plate to the Registering Officer,

and every person who uses or retains any plate affixed in respect of a registration which is no longer in force,

shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Power to take possession of plate on cancellation or suspension of registration.

22. Whenever the Registering Officer cancels or suspends for any period, under section 12, the registration of any hackney-carriage he shall take possession of the plate affixed to such carriage under this Act.

Penalty for using or having counterfeit plate.

23. (1) Every person who, for the purpose of deception or with a view to avoiding any of the provisions of this Act,

(i) uses or has in his possession any plate resembling or intended to resemble any plate affixed under this Act or

(ii) uses, affixes or has in his possession any plate issued under this Act,

shall, for every such offence, be liable to a fine not exceeding one hundred rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding one month.

(2) The Registering Officer or any police-officer may seize any plate used or had as aforesaid, wherever the same may be found.

(3) Whenever a police-officer seizes any plate under subsection (2), he shall forthwith deliver it to the Registering Officer.

of 1919.]

*Chapter IV.—Registration and Identification of Horses.—
Sections 24—26.)*

CHAPTER IV.

REGISTRATION AND IDENTIFICATION OF HORSES.

24. Every horse used, or intended to be used, for drawing a hackney-carriage, together with the harness of such horse, shall be annually registered by the Registering Officer at the time and in the manner provided by Chapter II with respect to the registration of hackney-carriages :

Horses
to be
registered
annually.

Provided that the Registering Officer may refuse to register any horse if such horse or its harness appears to him to be 'unserviceable or unfit for public use.

25. (1) The Registering Officer shall, at the time of registration, upon payment of such fee as may be fixed by by-law made under clause (f) of section 71, deliver a license, duly signed by him, to the owner of every horse.

License for
horse.

(2) Such license shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which the horse is registered.

26. (1) The following particulars shall be entered in the register, and shall be specified in the license to be given to the owner namely :—

Particulars
of register
and
license.

- (a) the class of the hackney-carriage with which the horse is to be used, and whether it is to be used singly or in a pair ;
- (b) the name and residence of the owner ;
- (c) the number assigned to the horse in the register ;
- (d) the place where it is intended to keep the horse ;
- (e) the date on which the license was granted ; and
- (f) such other particulars as may be prescribed by by-law made under section 71 ;

and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

(2) All the provisions of this Act in any way relating to the notification to the Registering Officer of the change of ownership and of residence of the owners of hackney-carriages and of the place where such carriages are kept shall be applicable in like manner to the owners of licensed horses.

(3) The person in whose name a horse is for the time being registered shall be deemed to be the owner of such horse for the purposes of this Act.

[Ben. Act I**(Chapter IV.—Registration and Identification of Horses.—
Sections 27—29.)**

Produce-
tion of
registered
horses for
inspection
half-yearly.

27. (1) The owner of every horse registered under this Act shall, on receipt of a notice in writing in this behalf, produce the horse and harness used therewith before the Registering Officer, for inspection, at such time as may be specified in the notice within two weeks after the expiration of six months from the date of every such registration.

(2) If the owner of any such horse fails to produce the same with its harness in accordance with the provisions of sub-section (1) he shall be liable to a fine not exceeding two rupees for every day during which, after the expiry of the period specified in sub-section (1) and before the horse is produced for inspection, the horse is used to draw a hackney-carriage, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days :

Provided that, before prosecuting the owner under this sub-section, the Registering Officer shall consider any explanation for the failure to produce the horse with its harness that may be put forward by the owner.

Identifi-
cation of
horses.

28. Upon the registration of any horse, the Registering Officer shall cause to be attached or applied to such horse such mark of identification as may be prescribed by by-law made under section 71.

Penalty
for using
horse not
bearing
identi-
fication
mark.

29. (1) If any horse is employed for drawing a hackney-carriage let or used or plying for hire without bearing a mark of identification attached or applied to it under this Act, the owner of such horse shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

(2) Any police-officer, or any person duly authorised by the Commissioner of Police in that behalf, may seize such horse with its harness and remove the same to a police-station :

Provided that any horse with its harness so removed shall be released on the owner thereof furnishing security to the satisfaction of the officer in charge of the police-station, for the production of the horse and its harness when required.

(3) Any horse with its harness seized under sub-section (2) which is not released under the provision thereto, may be detained at the police-station or sent to the Registration Office and detained there, until any fine imposed by the Magistrate has been paid.

(4) If the horse and the harness so seized be not claimed and if any fine imposed be not paid, together with any costs or charges incurred, within fifteen days of such seizure or imposition of such fine, respectively, such horse and its harness may be sold by auction, after previous advertisement of such auction, and the sale-proceeds applied to the payment of the fine and all costs and charges incurred on account of the detention and sale.

of 1919.]

*(Chapter IV.—Registration and Identification of Horses.—
Chapter V.—Driver's License and Ticket.—Sections 30—33.)*

(5) The surplus, if any, if not claimed by the owner within a further period of one month, shall be credited and applied in the same manner as fees and fines realized under this Act.

30. The Registering Officer may cancel, or may suspend for such period as he thinks fit, the registration of any horse and the license granted to the owner under this Act, whenever it shall appear to him that such horse or the harness used therewith is unfit for public use.

Cancellation or suspension of registration of horse and owner's license.

31. All the provisions of this Act in any way relating to the renewing, producing, using, or taking possession of plates affixed to hackney-carriages shall, in like manner and so far as the same may reasonably be applied, be applicable to the marks of identification attached or applied to horses.

Application of certain provisions relating to hackney-carriages to horses.

CHAPTER V.

DRIVER'S LICENSE AND TICKET.

32. (1) No person shall act as a driver of a hackney-carriage without a license granted by the Registering Officer.

Driver of hackney-carriage to have license.

(2) No person shall be so licensed unless the Registering Officer, after due inquiry, is satisfied—

- (a) that he is competent to drive a hackney-carriage, and has a sufficient knowledge of localities in Calcutta ;
- (b) that he is of sober habits, and has not been convicted of any offence which, in the opinion of the Registering Officer, is of such a nature as to render him unfit to hold a driver's license ; and
- (c) that he is not less than eighteen years of age.

33. (1) Every license granted under section 32, sub-section (1), shall contain—

Particulars and duration of license.

- (a) the number of the license ;
- (b) the name, father's name, place of abode and age of the person to whom such license is granted ;
- (c) the date on which the license was granted ; and
- (d) a summary of the more important statutory provisions and by-laws affecting drivers of hackney-carriages ;

and shall bear the signature of the Registering Officer.

(Chapter V.—Driver's License and Ticket.—Sections 34—38.)

(2) Every license granted under section 32, sub-section (1), shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which it is granted, and shall thereafter be renewed, provided that the Registering Officer is satisfied that the driver continues to fulfil the conditions prescribed by clauses (a) and (b) of sub-section (2) of that section.

(3) For every such license and for every renewal thereof there shall be paid a fee of two rupees.

Notice
to be
given of
change of
driver's
residence.

34. (1) Whenever a driver licensed under this Act changes his residence, he shall, within one week from the date of such change, give to the Registering Officer a notice in writing thereof.

(2) Every such driver who neglects to give such notice shall be liable, for every such offence, to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Penalty
for not
having
license,
or lending
it out.

35. If any person acts as the driver of a hackney-carriage, without holding a license in force for the time being,

or transfers, or lends his license, or allows the same to be used by any other person,

he shall, for every such offence, be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty
for per-
mitting
unlicensed
person to
act as
driver.

36. If any owner of a hackney-carriage permits any person, who has not obtained a driver's license, or whose license has either expired or been cancelled or suspended, to drive such carriage for hire, he shall be liable, for every such offence, to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days :

Provided that such owner and such licensed driver shall be subject to all the provisions of this Act, for any act done or omitted to be done by such driver during such employment, in like manner as if such driver had been duly licensed.

Particulars
of license
to be
registered
and copy
given on

37. The particulars of every license which is granted under section 32 shall be entered in the register, to be kept for that purpose at the office of the Registering Officer ; and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

of fee.

Driver to
wear
metal
ticket.

38. (1) The Registering Officer shall, at the time of granting a license to any driver of a hackney-carriage, deliver to him a metal ticket bearing the number of his license.

(2) Every driver to whom such ticket is delivered shall, at all times while acting as driver or while attending before any Magistrate, carry such ticket exposed to view.

of 1919.]

(Chapter V.—Driver's License and Ticket.—Sections 39—41.)

(3) In case any such driver omits to wear such ticket exposed to view while acting as driver or attending before a Magistrate, he shall be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

39. If, during the term of the license, the number on any ticket becomes indistinct or obliterated or the ticket is lost or stolen, the licensed driver shall produce his license before the Registering Officer, and on proving the loss of the ticket or on delivering the defective ticket to the Registering Officer, as the case may be, shall be entitled to have a new ticket upon payment of a fee of eight annas :

Driver entitled to new ticket on loss or obliteration of former one.

Provided that, if any ticket, in lieu of which a new ticket has been issued under this section, be afterwards recovered, the same shall forthwith be delivered to the Registering Officer.

40. Every driver licensed under this Act who uses or wears the ticket granted to him after the number thereon has become indistinct or obliterated,

Penalty for using obliterated ticket or for failing to deliver lost ticket when recovered.

and every person in whose possession any ticket which has been lost or stolen comes and who refuses or wilfully neglects for three days to deliver the same to the Registering Officer as required by the proviso to section 39,

shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

41. (1) Upon the expiration or other determination of any license granted to a driver under this Act, such driver shall deliver his license and ticket to the Registering Officer.

License and ticket to be delivered on expiry.

(2) Every driver who wilfully neglects for seven days to deliver such expired license and ticket to the Registering Officer,

and every person who uses, wears or retains any such expired license or ticket or any license or ticket other than such as shall have been delivered to him under the provisions of this Act.

and every person to whom any ticket has been delivered under this Act, who lends or transfers such ticket, whether current or expired, to any other person,

and every person who wears or uses the ticket of any other person,

shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

(Chapter V.—Driver's License and Ticket.—Sections 42—46.)

Power to take possession of driver's ticket on cancellation or suspension of registration.

Penalty for using or wearing counterfeit ticket.

Penalty for failing to produce license before Magistrate.

Endorsement of conviction, warning or reprimand, on license.

Revocation or suspension of driver's license on conviction.

42. Whenever the Registering Officer cancels or suspends for any period, under section 12 or section 30, the registration of any hackney-carriage or horse, as the case may be, shall take possession of the ticket which was delivered to the driver of such carriage under section 38 or section 39.

43. (1) Every person who, for the purpose of deception, uses or wears any ticket resembling or intended to resemble any ticket granted under section 38 or section 39 shall, for every such offence, be liable to a fine not exceeding one hundred rupees, and in default of payment of fine, to simple imprisonment for a period not exceeding one month.

(2) The Registering Officer or any police-officer may seize any such expired counterfeit ticket, wherever the same may be found.

(3) Whenever a police-officer seizes any expired or counterfeit ticket under sub-section (2), he shall forthwith deliver it to the Registering Officer.

44. Whenever any driver is summoned to appear before any Magistrate to answer any charge preferred against him under this Act, he shall carry with him his license, and produce the same if required so to do; and any driver who, on such requisition, fails to produce such license shall, for every such offence, be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding five days.

45. Whenever a Magistrate convicts a driver of any offence punishable under this Act, or warns him of his liability to punishment for any such offence, or reprimands him in respect of his conduct as a driver, the Magistrate shall endorse on the driver's license—

(a) the nature of the offence for which the driver was convicted, the date of the conviction and the penalty imposed; or

(b) the warning or reprimand given, as the case may be, and shall inform the Registering Officer of every such endorsement.

46. (1) Any Magistrate before whom any driver is convicted of any offence, whether under this Act or under any other Act, may cancel his license or may suspend the same for such period as the Magistrate thinks fit, and for that purpose may require the driver, or any other person in whose possession such license and the ticket thereto belonging shall then be, to deliver up the same.

(2) Every driver or other person who, on being so required, refuses or neglects to deliver up the license and ticket, shall be liable, for every such offence, to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

of 1919.]

(Chapter V.—Driver's License and Ticket.—Chapter VI.—Fares, Hiring and Plying for Hire.—Sections 47, 48.)

(3) The Magistrate shall forward every license and every ticket delivered to him under sub-section (1) to the Registering Officer, together with a memorandum of his sentence in the case.

(4) The Registering Officer shall enter the fact of such sentence in the register referred to in section 37, and if the license has been suspended, the Registering Officer shall, on application at the end of the period of suspension, re-deliver such license and ticket to the person to whom they were granted.

47. (1) If it appears to the Registering Officer that any licensed driver is not a fit person to drive a hackney-carriage, he may cause a notice to be served on such driver, requiring him to appear before the Registering Officer, at such time as may be specified in the notice, for re-examination. Every such notice shall state the reasons for such re-examination.

Power to Registering Officer to cancel or suspend driver's license.

(2) (a) If such driver fails to appear in pursuance of the notice served under sub-section (1), or

(b) if, upon his appearance, the Registering Officer finds that he is not a fit person to drive the hackney-carriage, or

(c) if the owner of the carriage or of the horse used therewith on being summoned to produce the driver to answer any charge preferred against him under this Act fails to do so,

the Registering Officer may cancel the driver's license or may suspend the same for such period as he thinks fit, and may for that purpose require the driver, or any other person in whose possession such license or the ticket thereto belonging may then be, to deliver up the same :

Provided that, before passing an order under clause (c), the Registering Officer shall consider any explanation for the failure that may be put forward by the driver or the owner, as the case may be.

(3) Every driver or other person who fails to comply with any requisition made upon him under sub-section (2) shall be liable, for every such offence, to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

CHAPTER VI.

FARES, HIRING AND PLYING FOR HIRE.

48. (1) The owner of every hackney-carriage registered under this Act shall cause to be put up, in such manner and in such position as may be directed by the Registering Officer, on the inside of such carriage, a list in such language or languages as the ¹[State Government] may, by notification, prescribe, showing the amount of fare according to distance and time which may be demanded and taken from the hirer of such carriage.

Owner to keep list of fares inside carriage.

¹See foot-note 8 on page 509, ante.

[Ben. Act I

(Chapter VI.—Fares, Hiring and Plying for Hire.—
Sections 49—51.)

(2) Every owner who fails to comply with the provisions of this section shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine to simple imprisonment for a period not exceeding seven days.

Maximum distance to which driver is bound to drive.

49. (1) The driver of every hackney-carriage registered under this Act shall drive such carriage to any place which is not more than six miles from the place where the same has been hired, to which he shall be required by the hirer thereof to drive the same.

(2) When any carriage is hired by time, the driver thereof shall drive the same at a rate not less than six miles an hour in the case of first and second class carriages, and five miles an hour in the case of any other class of carriage.

(3) Any such driver who, without sufficient excuse (the burden of proving which excuse shall lie upon him), fails to comply with the provisions of this section shall be liable to a fine not exceeding twenty rupees, and in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty for refusing to let a carriage for hire.

50. Any owner, driver, or person in charge of any hackney-carriage registered under this Act, who, without sufficient excuse (the burden of proving which excuse shall lie upon him), refuses to let such carriage for hire, shall, on the complaint of the aggrieved party or of any public officer or servant, be liable, for every such offence, to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days; and shall also pay to the party complaining such compensation as the Magistrate thinks fit.

Penalty on driver and attendant for certain offences.

51. Every driver or attendant of a hackney-carriage who—

- (a) is drunk during his employment;
- (b) makes use of insulting or abusive language or gesture during his employment;
- (c) stands (elsewhere than at some stand or other place appointed for the purpose) or loiters, for the purpose of being hired, in or upon any public street, road or place;
- (d) suffers his carriage to stand for hire across any street or alongside of any other carriage;
- (e) refuses to give way (when he reasonably and conveniently may do so) to any other carriage;
- (f) wilfully obstructs or hinders the driver of any other carriage in taking up or setting down any passenger into, or from, such other carriage;
- (g) wrongfully prevents or endeavours to prevent the driver of any other carriage from being hired;
- (h) demands or takes more than the proper fare to which he is legally entitled;

of 1919.]

*(Chapter VI.—Fares, Hiring and Plying for Hire.—
Sections 52, 53.)*

- (i) refuses to admit and carry in his carriage the number of passengers which such carriage is licensed to carry ;
- (j) carries more than such number of passengers ;
- (k) refuses to carry by his carriage such quantity of luggage as is prescribed by by-law made under section 71 ;
- (l) being hired, permits or suffers any person to be carried in, or upon, or about such carriage during such hire without the consent of the person hiring the same ;
- (m) drives in the carriage any animal which is not so secured as to be under the control of the driver ;
- (n) refuses to let a carriage on hire by time or distance as the hirer may require ;
- (o) being hired by time or distance, before he has been discharged by the hirer, wilfully deserts from the hiring ;
- (p) plies for hire with any carriage or horse which shall be at the time unfit for public use ;
- (q) disobeys any direction given by a police-officer for the regulation of traffic and the control of carriages on hackney-carriage stands ;
- (r) leaves his carriage unattended in any street or public place ;
- (s) allows his carriage to be used by any person for the purpose of soliciting any other person to immorality,

shall be liable to a fine not exceeding one hundred rupees or to imprisonment for a period not exceeding two months.

52. Any licensed driver, employed as a driver by the owner of any hackney-carriage registered under this Act, who, without sufficient excuse, refuses or neglects to attend at the premises where such carriage is kept for the purpose of driving any such carriage, whereby such owner is prevented from letting out the same, shall be liable, for each offence, to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Penalty on driver for refusing to attend at premises of owner.

53. (1) When a complaint is made before a Magistrate against the driver or attendant of a hackney-carriage registered under this Act for any offence committed by him against the provisions of this Act, or any by-law made thereunder, such Magistrate may, if the driver or attendant fails to appear, forthwith summon the owner of the carriage or of the horse used therewith, or both such owners, as he may consider necessary, personally to appear and to produce the driver or attendant of such carriage to answer the complaint.

Owner may be summoned to appear before Magistrate and to produce driver or attendant.

[Ben. Act I

(Chapter VI.—Fares, Hiring and Plying for Hire.—Sections 54—57.)

(2) If any such owner, without reasonable excuse, neglects or refuses to appear personally, or to produce the driver or attendant in compliance with a summons issued under sub-section (1), he shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days, and so from time to time, as often as he shall be so summoned, until such driver or attendant shall be produced by him :

Provided that if such owner, without reasonable excuse, neglects or refuses to appear personally, or to produce such driver or attendant on the second or any subsequent summons requiring him so to do, the Magistrate may proceed to hear and determine the complaint in the absence of the owner and the driver or attendant, as the case may be, or any of them.

Procedure
on refusal
to pay fare.

54. (1) If any person who has hired a hackney-carriage registered under this Act, and who, without sufficient excuse, refuses to pay to the owner or driver thereof, on demand, the proper fare to which he is entitled, the Magistrate may order payment of such fare, and also of such compensation for loss of time as shall seem reasonable.

(2) If any person who has used any such carriage attempts to evade payment of the fare, or any portion of the same, he shall be liable to a fine not exceeding fifty rupees, or to simple imprisonment for a period not exceeding fourteen days in addition to the payment of such fare and compensation, as hereinbefore mentioned.

Penalty for
destroying
carriage-
plate, etc.

55. Any person who maliciously or knowingly tears, destroys, defaces, obliterates or removes any plate, table of fares, driver's ticket or mark of identification which has been affixed, put up, granted, attached or applied under the provisions of this Act, shall be liable for every such offence to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty
for wilful
injury
to carriage.

56. Any person using a hackney-carriage registered under this Act who wilfully injures the same, shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days ; and shall also pay to the owner of the carriage such compensation for the injury, as the Magistrate may direct.

Disputes
how to be
settled.

57. (1) In case of any dispute between the hirer and driver of any hackney-carriage registered under this Act,

the hirer may require the driver to drive to the Court of the nearest Magistrate or to the Registering Officer ;

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(Chapter VI.—Fares, Hiring and Plying for Hire.—Sections 58—60.)

and, if any driver refuses to obey such requisition, the hirer may give such driver into the custody of the nearest police-officer.

(2) The police-officer shall thereupon take the driver and the hirer, together with the carriage and horse, to such Court or Registering Officer,

and the Magistrate or Registering Officer, as the case may be, may hear and determine the dispute in a summary way.

58. In the case of disputes as to the fare to be calculated according to the distance, any table or book signed by the Registering Officer, shall, on proof of such signature, be taken to be conclusive evidence of the distances therein stated.

Table of distances signed by Registering Officer conclusive.

59. (1) Any hackney-carriage registered under this Act may ply for hire as a stage-carriage.

Hackney-carriage may ply for hire as stage-carriage.

(2) The owner or driver of a carriage so plying for hire or hired as a stage-carriage shall not be subject to any by-law made under clause (g) of section 71, but shall be entitled to demand and take for the hire of such carriage such fares as shall be agreed upon between him and the several hirers, respectively, subject to any maximum which may be prescribed by the ¹[State Government] by an order in writing.

(3) All the other provisions of this Act shall be applicable to the case of a hackney-carriage plying as a stage-carriage, so far as the same may be applicable in each case.

60. (1) The Corporation of Calcutta shall, in consultation with the Commissioner of Police, from time to time, appoint the places in Calcutta that are to be used as public stands for hackney-carriages.

Stands to be appointed.

(2) Every public stand so appointed shall have a board placed in a conspicuous place on the same, containing a notice in such language or languages as the ¹[State Government] may, by notification, prescribe, stating that the stand is a public stand under this Act and specifying the number of carriages that may stand upon it.

¹ See foot-note 3 on page 509, ante.

(Chapter VII.—Palanquins.—Sections 61—64.)

CHAPTER VII.

PALANQUINS.

Palan-
quins to
be regis-
tered
annually.

61. Every palanquin plying for hire in Calcutta shall be registered annually by the officer appointed for registering hackney-carriages, at the time and in the manner provided by Chapter II with respect to the registration of hackney-carriages :

Provided that the Registering Officer may refuse to register any palanquin, or may cancel or suspend for such period as he thinks fit, the registration thereof, whenever such palanquin appears to him to be unfit for public use.

License
for palan-
quins.

62. (1) The Registering Officer shall, at the time of registration, deliver a license, duly signed by him, to the owner of every palanquin.

(2) Such license shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which the palanquin is registered.

Parti-
culars of
register
and
license.

63. (1) The following particulars shall be entered in the register and shall be specified in the license to be given to the owner, namely :—

- (a) the number of the palanquin ;
- (b) the name and residence of the owner, and the place where the palanquin is to be kept ;
- (c) the number of persons the palanquin is licensed to carry ;
- (d) the date on which the license was granted ;
- (e) such other particulars as may be prescribed by by-law made under section 71.

(2) All the provisions of this Act in any way relating to the notification to the Registering Officer of the change of ownership or of residence of the owners and drivers of hackney-carriages shall be applicable in like manner to the owners and bearers, respectively, of palanquins.

Plate
to be
affixed
outside
palanquins.

64. (1) Upon the registration of any palanquin the Registering Officer shall cause to be affixed on some conspicuous part of the outside of such palanquin a plate bearing the number of such palanquin in the register and the number of persons it is licensed to carry.

(2) If any palanquin is let, used or plies for hire without having a proper plate affixed thereto under sub-section (1), the owner thereof shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

of 1919.]

(Chapter VII.—Palanquins.—Sections 65—68.)

(3) The person in whose name a palanquin is for the time being registered shall be deemed to be the owner thereof for the purposes of this Act.

65. All the provisions of this Act in any way relating to the cancellation or suspension of the registration of hackney-carriages and to the renewing, producing, using or taking possession of plates affixed to hackney-carriages, shall be applicable in like manner to palanquins.

Application of certain provisions relating to hackney-carriages to palanquins.

66. The owner of every palanquin registered under this Act shall cause to be put up, in such manner and in such position as may be directed by the Registering Officer, on the inside of such palanquin, a list in such language or languages as the ¹[State Government] may, by notification, prescribe, showing the amount of fare according to distance and time which may be demanded and taken from the hirer of such palanquin.

Owner to keep list of fares inside palanquins.

67. (1) No person shall act as the bearer of a palanquin registered under this Act unless such person has obtained a license from the Registering Officer in the manner prescribed by Chapter V for drivers of hackney-carriages.

License for bearers of palanquins.

(2) All the provisions of this Act in any way relating to the taking out, granting, renewing, producing or using the licenses, or to the issuing, granting, wearing, using or taking possession of tickets granted to drivers of hackney-carriages, shall be applicable in like manner to the bearers of palanquins.

(3) For every license to act as a palanquin-bearer granted under this Act, there shall be paid a fee of four annas ; and for every renewal thereof there shall be paid a fee of two annas.

68. (1) The bearers of every palanquin registered under this Act shall carry such palanquin to any place which is not more than five miles from the place where the same has been hired, to which they shall be required by the hirer thereof to carry the same.

Maximum distance to which palanquins are to be carried.

(2) When any such palanquin is hired by time, the bearers thereof may be required to carry it at any rate not exceeding two and a half miles within one hour.

¹ See foot-note 8 on page 569, *ante*.

[Ben. Act I

(Chapter VII.—Palanquins.—Chapter VIII.—Rickshaws.—
Chapter IX.—By-laws.—Sections 69—71.)

Provisions
regarding
owners and
drivers of
hackney-
carriages
applicable
to owners
and
bearers of
palanquins.

69. All the provisions of this Act as to offences committed by or against the owners and drivers of hackney-carriages and the penalties in respect of the same and recovery thereof, and all the remedies given to or against hirers, owners or drivers of hackney-carriages, except the provisions contained in section 53, shall be applicable, so far as the same may reasonably be applied, to the owners and bearers of palanquins.

CHAPTER VIII.

RICKSHAWS.

Rickshaws.

70. All the provisions contained in this Act, relating to palanquins, and the hirers, owners and bearers thereof, shall be applicable, *mutatis mutandis*, and so far as the same may reasonably be applied, to all rickshaws plying for hire in any town or place in which this Act is in force, and to the hirers, owners and bearers of such rickshaws :

¹Provided that the Registering Officer may cancel, or suspend for such period as he thinks fit, the registration of a rickshaw if in his opinion the type of the rickshaw has been so altered as to render it different from that in respect of which registration was made :

¹Provided further that in any area included in Calcutta under clause (b) of section 2, the functions of the Registering Officer shall be performed by an officer appointed by the Commissioners of the Municipality comprising such area and the said officer shall forward to the Deputy Commissioner of Police referred to in sub-section (1) of section 6 all papers relating to registration for record after they have been duly dealt with.

CHAPTER IX.

BY-LAWS.

Power to
State
Govern-
ment
to make
by-laws.

71. (1) The ²[State Government] may make by-laws generally for carrying out the provisions and intentions of this Act ; and in particular, and without prejudice to the generality of the foregoing power, they may make by-laws—

(a) regulating the examination and qualification of drivers of hackney-carriages and bearers of palanquins and rickshaws, and the conditions under which they may be employed ;

¹Added by sec. 4 of the Calcutta Hackney-carriage (Amendment) Act, 1948 (West Ben. Act XXXVI of 1948).

²See foot-note 8 on page 509, *ante*.

of 1919.]

(Chapter IX.—By-laws.—Section 72.)

- (b) prescribing the uniforms to be worn by drivers and attendants of hackney-carriages ;
- (c) specifying the description of horses, harness, or other things to be used in hackney-carriages, palanquins and rickshaws, the dimensions and colours of such carriages, palanquins and rickshaws, and prescribing the conditions in which such carriages, palanquins and rickshaws and the horses, harness and other things used therewith, shall be kept ;
- (d) prescribing the mark of identification of horses to be used in any hackney-carriage and the manner in which the mark is to be used ;
- (e) providing for the division of hackney-carriages into classes (if any) ;
- (f) prescribing the fees to be paid for the registration of carriages, horses, palanquins and rickshaws, respectively, under this Act, and for alterations to be made in any register kept thereunder ;
- (g) prescribing the fares to be paid for the hire of hackney-carriages, palanquins and rickshaws, respectively ;
- (h) regulating the quantity of luggage to be carried by hackney-carriages ;
- (i) for the inspection of the premises on which any such carriages, palanquins, rickshaws, horses, harness and other things are kept ;
- (j) for the protection of weak, lame or sickly horses and the prevention of their use in hackney-carriages ;
- (k) for the regulation of the use of horses in hackney-carriages ;
- (l) for the publication of a table of distances ;
- (m) for regulating or preventing the placing of advertisements on or in hackney-carriages, palanquins or rickshaws ; and
- (n) prescribing particulars to be entered in the registers and licenses under this Act.

(2) By-laws made under this section shall be published in such manner as the ¹[State Government] may direct.

72. Whoever infringes any by-law made under this Act shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty for
infringe-
ment of
by-laws.

¹See foot-note 3 on page 509, *ante*.

(Chapter X.—Prosecutions.—Chapter XI.—Miscellaneous.—
Sections 73—77.)

CHAPTER X.

PROSECUTIONS.

Effect of
substituted
service of
summons.

73. A summons against a driver of a hackney-carriage registered under this Act for any offence against this Act may be served either on the person accused, or on the owner of the carriage, or on the owner of the horse used therewith, and the service on the owner shall be as effectual as if it had been made on the driver personally.

Ex parte
disposal of
criminal
charges.

74. If, in any prosecution under this Act, the person charged does not appear as directed by the summons, the Magistrate may, upon proof of service, and if no sufficient cause be shown for the non-appearance, proceed to hear and determine the case in his absence.

Liability
to fine
when
incurred.

75. (1) No person shall be liable to prosecution for any offence under this Act, unless the complaint respecting such offence be made within one month from the commission of such offence.

(2) For the purposes of this section every omission punishable under this Act shall be deemed to be a continuing offence so long as the omission continues.

Damage
to property
to be paid
for.

76. (1) If, through any act, neglect or default on account whereof any person is fined under this Act, any damage to any property has been committed by such person, he shall be liable to make good such damage to the owner of such property as well as to pay such fine.

(2) The amount of such damage shall be determined by the Magistrate by whom such person has been fined; and in default of payment of the amount of such damage on demand, the same may be levied in the same manner as a fine.

CHAPTER. XI.

MISCELLANEOUS.

Property
left in
carriage,
palanquin
or rick-
shaw to be
deposited
in police-
station.

77. (1) If any property is left by any person in a hackney-carriage, palanquin or rickshaw, the driver or bearer thereof, as the case may be, shall, within twenty-four hours, carry such property, if not sooner claimed by the owner thereof, to the nearest police-station, and shall there deposit it with the officer in charge.

(2) The said officer shall forthwith enter in a book to be kept for that purpose—

(a) the description of such property;

(b) the name and address of the driver or bearer who brings it;

of 1919.]

(Chapter XI.—Miscellaneous.—Sections 78—80.)

(c) the day and hour when it is brought ;

(d) the name and address of the owner of the hackney-carriage, palanquin or rickshaw in which the property has been left and the registered number of such carriage, palanquin or rickshaw ;

and shall grant a receipt for the same.

(3) The said officer shall also send a copy of every such entry to the Registering Officer.

78. Any driver or bearer who fails to deposit any property left in a hackney-carriage, palanquin or rickshaw within the time prescribed in section 77, sub-section (1), shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Penalty
for
neglecting
to deposit
property.

79. The property entered under section 77, sub-section (2), shall be returned to the person who proves to the satisfaction of the Commissioner of Police or such other police officer, not below the rank of Inspector, as he may appoint in this behalf, that the same belonged to him, on payment of all costs incurred, together with such reasonable sum to the person who brought the same as the Commissioner or such other officer may determine :

Property
to be re-
turned to

Provided that, if within six months from the date of such deposit no person satisfies the Commissioner or such other officer that he is the owner of the property, the Commissioner may cause the property to be sold, or otherwise disposed of ; and the proceeds, after deducting therefrom the expenses, together with a reasonable sum to the driver or bearer shall be credited and applied in the same manner as fees and fines realized under this Act.

80. (1) Every owner of a hackney-carriage or palanquin or the driver or bearer thereof, not providing for disinfection of the carriage or palanquin, at a place appointed by the Registering Officer, immediately after it has, with his knowledge, conveyed any person suffering from any dangerous infectious disorder, or after it has been used for conveying a corpse, and which fact had been previously notified by the hirer to the owner, driver or bearer shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days :

Disin-
fection of
hackney-
carriage
or palan-
quin after
conveying
a patient
or corpse.

Provided that no such owner, driver or bearer shall be required to convey any person so suffering or any corpse until he has been first paid a sum sufficient to defray the loss and expenses incurred thereby, such sum not to exceed ten rupees in the case of a hackney-carriage and five rupees in the case of a palanquin.

[Ben. Act I of 1919.]

(Chapter XI.—Miscellaneous.—Sections 81—85.)

Provision
forIn case of
seizure
of hackney-
carriage or
palanquin.

81. If a police-officer has cause to arrest a driver of a hackney-carriage or a bearer of a palanquin for any offence under this Act or any other bailable offence, or to seize a hackney-carriage or palanquin or a horse employed in drawing such carriage for a breach of any of the provisions of this Act or of any by-law made thereunder, when such carriage or palanquin is being used for the conveyance of a passenger, such a police officer shall, if so required by the passenger, permit the carriage or palanquin to proceed to the place to which the passenger desires to proceed, and shall thereafter complete the arrest.

82. [*Fees and fines how to be dealt with.*—Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

Indemnity.

83. No suit shall be maintainable against the Commissioner of Police or any municipal authority, officer or servant or any police-officer or any person acting under the direction of the Commissioner of Police or of any municipal authority, officer or servant or of a Magistrate, or of any person appointed under section 84, sub-section (1) of this Act, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any by-law made thereunder.

Effect
when Act
extended
outside
Calcutta.

84. (1) Whenever this Act is extended to any other town or local area outside Calcutta under clause (a) of section 2, the ¹[State Government] may, by notification, appoint persons, or local authorities, to exercise and perform in such town or area the same powers and duties as are conferred or imposed by this Act on the Corporation of Calcutta and the Commissioner of Police, respectively.

(2) In each town or local area to which this Act may be extended, for the word "Calcutta" in sections 5, 32, 60, ²[and 61],
 * * * shall be read the name of such town or area,
 * * *

Hackney-
carriage
outside
Calcutta
to ply
within
certain
radius.

85. (1) Notwithstanding anything contained in this Act, a hackney-carriage registered under this Act in any town or local area outside Calcutta may ply for hire in any place outside Calcutta within a radius of six miles from such town or local area.

(2) All the provisions of this Act shall be applicable to the case of a hackney-carriage plying within such radius so far as the same may be applicable in each case.

¹See foot-note 8 on page 509, *ante*.

²This word and figures were substituted for the figures and word "61 and 82" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word and figure "sub-section (2)" were repealed by sec. 8 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴The words "and for the words 'Calcutta Municipal Fund' in section 82, sub-section (1), shall be read 'the fund of the local authority for such town or area'" were omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act No. II of 1919

(The Bengal Juvenile Smoking Act, 1919.)¹

- ADAPTED ... |
- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
 - (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
 - (c) The Adaptation of Laws Order, 1950.

(15th January, 1919.)

An Act for the Prevention of Smoking by Juveniles.

WHEREAS it is expedient to make provision for the prevention of smoking by young persons ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Juvenile Smoking Act, 1919.

Short title, local extent and commencement.

(2) It extends in the first instance to Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899² :

Provided that the ³[State Government] may, from time to time, by notification in the ⁴[Official Gazette], extend⁵ this Act to any other town or place in ⁶[West Bengal].

(3) It shall come into force on such date⁷ as the ⁸[State Government] may, by notification in the ⁴[Official Gazette], direct.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1917, Pt. IV, page 18 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 853-858, and see the *Calcutta Gazette* of 1918, Pt. IVA, pages 1030-1035, and page 1194, and pages 1277-1281.

²Bengal Act III of 1899 was repealed and re-enacted by the Calcutta Municipal Act, 1933 (Ben. Act III of 1933) which Act was again repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), and this reference should now be construed as a reference to clause (11) of section 5 of the last mentioned Act.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The provisions of this Act were extended to—

- (1) the town of Berhampore with effect from the 15. 4. 21 by Notification No. 1130 P.H., dated the 8: 4. 21, published in the *Calcutta Gazette* of 1921, Part I, page 582,
- (2) the town of Jalpaiguri with effect from the 15. 4. 19 by notification No. 1018 P.H., dated 8. 4. 19, published in the *Calcutta Gazette* of 1919, Part I, page 667,
- (3) all towns and places in West Bengal, where these have not already been extended, with effect from the 1st January, 1957, by notification No. P.H./3053/98—6/55, dated 21. 8. 56, published in the *Calcutta Gazette* of 1956, Part I, page 3453.

⁶These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁷The 1st February, 1919, see notification No. 1148an., dated the 27th January, 1919, published in the *Calcutta Gazette* of 1919, Pt. IB, page 23.

[Ben. Act II of 1919.]

(Sections 2—6.)

De-
finitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “cigarettes” include cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking ;

(h) “police-officer” means a member of an established police force above the rank of a head constable ; and

(c) “tobacco” means tobacco in any form, and includes any smoking mixture intended as a substitute for tobacco.

Prohibition
against
sale of
tobacco,
etc., to
young
persons.

3. (1) No person shall sell or give to a person apparently under the age of sixteen years any tobacco, pipes or cigarette papers, whether for his own use or not :

Provided that a person shall not be guilty of an offence under this sub-section for selling tobacco, other than cigarettes, to a person apparently under the age of sixteen years if he did not know, and had no reason to believe, that it was for the use of that person.

(2) If any person contravenes the provisions of sub-section (1), he shall be liable on summary conviction before a Magistrate to a fine not exceeding ten rupees, and in the case of a second offence to a fine not exceeding twenty rupees, and in the case of a subsequent offence to a fine not exceeding fifty rupees.

Power of
police-
officers
and others
to seize
and
destroy
tobacco,
etc., in the
possession
of a young
person in
certain
places.

4. It shall be lawful for a police-officer in uniform, or any other person or class of persons duly authorised by the ¹[State Government] in this behalf, to seize any tobacco, pipes or cigarette papers in the possession of any person apparently under the age of sixteen years whom he finds smoking in any street or public place, and to destroy any such article.

Institution
of proceed-
ings.

5. No Magistrate shall take cognizance of an offence under this Act, except upon a complaint made by, or at the instance of, the parent or guardian of the young person concerned or a police-officer or other person empowered to make seizure under section 4.

Act not to
apply in
certain
cases.

6. The provisions of this Act shall not apply when the person to whom the tobacco, pipes or cigarette papers are sold, or in whose possession they are found, was at the time employed by a manufacturer of, or dealer in, such articles either wholesale or retail, for the purposes of his business.

¹ See footnote 3 on page 535, ante.

Bengal Act IV of 1919
(THE BENGAL PRIMARY EDUCATION ACT, 1919.)

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Bengal Act IV of 1919

(The Bengal Primary Education Act, 1919.)¹

AMENDED	Ben. Act III of 1921. Ben. Act VII of 1930. Ben. Act VII of 1932. Ben. Act I of 1939.
EXTENDED TO COOCH BEHAR ..			West Ben. Act XXX of 1950. (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	..	..	(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(14th May, 1919.)

An Act to provide for the extension of primary education in Municipalities and in certain other areas in Bengal.

WHEREAS it is expedient to provide for the extension of primary education in Municipalities and in certain other areas in Bengal.

It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Primary Education Act, 1919.

Short
title and
extent.

(2) It extends in the first instance to all Municipalities in *[West Bengal] :

¹For Statements of Objects and Reasons, see the *Calcutta Gazette* of 1917, Pt. IV, page 41 ; and for Proceedings in Council, see the *Calcutta Gazette* of 1918, Pt. IVA, pages 80-84, and 1157-1165, and see the *Calcutta Gazette* of 1919, Pt. IVA, page 84, and pages 148-220, and 520-553.

²These words were substituted for the word "Bengal" by paragraph (s) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order 1948.

[Ben. Act IV

(Part I.—Preliminary.—Section 2.)

¹Provided that the ²[State Government] may, by a notification published in the ³[*Official Gazette*], extend the provisions of this Act, with such modifications, for the purposes of adaptation, as they may deem fit, to any area in a Union constituted under section 38 of the Bengal Local Self-Government Act of 1885, ⁴[or under section 5 of the Bengal Village Self-Government Act, 1919,] and may authorize the Union Committee ⁵[or the Union Board] for such area to exercise and perform all or any of the powers and duties conferred and imposed on the Commissioner by this Act, subject to such control by the District or Local Board as the ⁶[State Government] may prescribe.

Ben. Act
III of 1885.
Ben. Act V
1919.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “to attend a recognised primary school” means to be present for instruction at such school for so many and on such days in the year and at such time or times on each day as may be prescribed by the School Committee for such school, subject to the rules and orders of the Education Department of the ²[State Government];

(2) “Commissioners” means the persons for the time being appointed or elected to conduct the affairs of a Municipality;

(3) “guardian” includes a parent or any person who is liable to support, or has the custody of, a boy not being less than six or more than ten years of age;

(4) “Municipality” means Calcutta as defined in ⁶[clause (11) of section 3 of the Calcutta Municipal Act, 1923], or any place in which the Bengal Municipal Act ⁷[1932], is in force;

Ben. Act
III of
1928.
Ben. Act
XV of
1932.

¹The proviso has been repealed by sec. 67 of the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930) in those districts in which the said section of the Act has come into force.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the words “*Calcutta Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words and figures were inserted by sec. 2(a) of the Bengal Primary Education (Amendment) Act, 1921 (Ben. Act III of 1921).

⁵These words were inserted by sec. 2(b), *ibid.*

⁶These words and figures were substituted for the words and figures “Clause (7) of section 8 of the Calcutta Municipal Act, 1899” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938). The Calcutta Municipal Act, 1928 (Ben. Act III of 1928) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to clause (11) of section 5 of the latter Act.

⁷These figures were substituted for the figures “1884” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

of 1919.]

(Part II.—Voluntary Primary Education.—Section 3.)

(5) “primary education” means such elementary education as may be prescribed from time to time for primary schools by the Education Department of the ¹[State Government] ;

(6) “recognised primary school” means a school (or a department of a school) appropriated to primary education and for the time being recognised by the Education Department of the ¹[State Government] for the purposes of such education ; and

(7) “School Committee” means a committee constituted under section 7.

PART II.

VOLUNTARY PRIMARY EDUCATION.

3. Within one year from the commencement of this Act or within such other period as may be prescribed by the ¹[State Government] in this behalf, the Commissioners shall submit to the ¹[State Government] a detailed statement, in such form, as may be prescribed by the ¹[State Government], containing the following particulars in respect of the Municipality :—

Statement
to be sub-
mitted by
Municipalities.

- (a) (i) the number of children, not being less than six or more than eleven years of age, within the Municipality ;
- (ii) the number of boys, not being less than six or more than ten years of age, therein ;
- (b) the school accommodation for the staff of, and the attendance at, existing primary schools ;
- (c) the school accommodation, staff and equipment required if suitable and adequate provision were to be made for the primary education of—
 - (i) all children referred to in clause (a) (i) likely to attend primary schools voluntarily ; and
 - (ii) all boys referred to in clause (a) (ii) ;
- (d) the manner in which and the periods within which it will be possible to provide the necessary school accommodation, staff and equipment referred to in clause (c) under the direct management and control of the Municipality.
- (e) the existing expenditure incurred by the Municipality on primary education and the expenditure to be incurred yearly in order to provide such school accommodation, staff and equipment ;

¹See foot-note 2 on page 540, *ante*.

[Ben. Act IV]

(Part II.—Voluntary Primary Education.—Part III.—Compulsory Primary Education.—Sections 4—6.)

- (f) the receipts already available, and the income including the probable receipts from any education cess that may in future be levied under section 17, which it may be estimated will be available to meet such expenditure ; and
- (g) the amount of grant or assistance from the Government which the Commissioners consider would be necessary to enable them to provide for primary education within the Municipality, or any part thereof.

Commissioners to make provision for primary education.

4. The ¹[State Government], after considering the statement required by section 3 and the conditions and resources of the Municipality, and after determining the amount of financial assistance from the Government which may be necessary in order to provide for primary education within the Municipality, may, if satisfied that the Municipality is able to meet the expenditure involved, direct the Commissioners to provide the necessary school accommodation, staff and equipment for all children, not being less than six or more than eleven years of age, likely to attend primary schools voluntarily within the Municipality and to assume the direct management and control of all such schools.

PART III.

COMPULSORY PRIMARY EDUCATION.

Operation of Part III.

5. The provisions of this Part shall not come into operation until a notification has been issued under section 6, sub-section (2).

Primary education when to be declared compulsory.

6. (1) If, after complying with the directions of the ¹[State Government] under section 4, the Commissioners are of opinion that the primary education of all boys, not being less than six or more than ten years of age, should be made compulsory within the Municipality, or any part thereof, they may apply to the ¹[State Government], in such manner as may be prescribed by rules made by the ¹[State Government], for permission to introduce therein compulsory primary education for such boys.

(2) The ¹[State Government], after considering the application and after determining the financial assistance from the Government which may be necessary to provide for compulsory primary education within the Municipality, shall, if satisfied that the Municipality is able to meet the expenditure involved, grant the permission asked for, and the Commissioners shall thereupon cause a notification to be issued declaring that primary education shall be compulsory for all such boys within the Municipality, or any part thereof, as the case may be.

¹ See foot-note 2 no page 540, ante.

of 1919.]

(Part III.—Compulsory Primary Education.—Sections 7, 8.)

(3) Every notification issued under this section shall be published in the ¹[*Official Gazette*] and in the local newspapers, if any, and shall be posted up at the Municipal office and at such other places, as the Commissioners shall deem necessary, specifying the date on and from which primary education shall be compulsory within the Municipality, or any part thereof.

(4) No notification shall be issued by the Commissioners under this section except in pursuance of a resolution passed at a special general meeting convened for the purpose and at which not less than two-thirds of the total number of Commissioners are present.

7. When a notification has been issued in any Municipality under section 6, sub-section (2), the Commissioners shall appoint a School Committee, to be constituted in such manner as may be prescribed by rules made under section 15 :

Constitution of School Committee.

Provided that a Deputy Inspector or a Sub-Inspector of Schools, at least one Commissioner and one or more residents of the Municipality, other than a Commissioner, shall be members of the Committee.

8. (1) In every area to which the provisions of this Part apply, it shall be the duty of the guardian of every boy, not being less than six or more than ten years of age, residing within that area to cause such boy to attend a recognized primary school unless, in the opinion of the School Committee, there is a reasonable excuse for his non-attendance.

Duty of guardian to send boy to school.

(2) Any of the following circumstances shall be deemed to be a reasonable excuse within the meaning of this section :—

- (a) that there is no recognized primary school within a distance of one mile, measured by the shortest route, from the residence of the boy which he can attend, and to which the guardian has no reasonable objection to send the boy ;
- (b) that the boy is prevented from attending the school by reason of sickness, infirmity, domestic necessity, the seasonal needs of agriculture or of his being the sole breadwinner of his family ;
- (c) that the boy is receiving education in some other satisfactory manner.

¹ See foot-note 3 on page 540, *ante*.

(Part III.—Compulsory Primary Education.—Sections 9—13.)

Order of
Magistrate
to compel
attendance.

9. (1) If the School Committee is satisfied that a guardian who is required under section 8 to cause a boy to attend a recognized primary school, has failed to do so, it shall, after giving a warning in writing to such guardian, apply to a Magistrate for an order to compel the guardian to enforce the attendance of such boy; and the Magistrate shall fix a day for the hearing of the application and cause notice thereof to be given to such guardian.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and after hearing the guardian or his authorized agent, if present, the Magistrate, if satisfied that the facts alleged in the application are true, may pass an order directing the guardian to cause such boy to attend a recognized primary school from a date to be specified in such order.

Penalty
for failure
to obey
order.

10. (1) Any guardian who fails to comply with an order passed under section 9 shall, on conviction before a Magistrate, be liable to a fine not exceeding five rupees, and also to a recurring fine not exceeding one rupee for each day after the first during which he continues so to offend.

(2) No Magistrate shall take cognizance of an offence under this section except on the complaint of the School Committee.

Prohibition
of employ-
ment of
boys.

11. No person shall, without the permission of the School Committee, employ any boy, not being less than six or more than ten years of age, who is required to attend a recognized primary school under this Part :

Provided that such permission shall not be necessary if the employment of the boy does not interfere with his attendance at such school.

Employer's
liability.

12. (1) The School Committee may prosecute any person who, after due warning, contravenes the provisions of section 11.

(2) Unless such person satisfies the Magistrate that there is a reasonable excuse, within the meaning of section 8, sub-section (2), for the non-attendance of the boy, or that the time and nature of employment of the boy are such that he is not prevented from attending a recognized primary school, or that the boy was taken into employment under false representations as to age, residence and other conditions, such person shall, on conviction before a Magistrate, be liable to a fine not exceeding twenty rupees.

Delegation
of some of
the func-
tions of
the School
Committee.

13. An application to a Magistrate under section 9 or a complaint to a Magistrate under section 10 or section 12, may be made on behalf of the School Committee by such person as may be authorized by the School Committee by general or special order in this behalf.

of 1919.]

*(Part III.—Compulsory Primary Education.—Part IV.—
Education Cess.—Sections 14—17.)*

14. When primary education has been made compulsory in any municipality, or any part thereof, if a guardian, who is required under the provisions of this Part to cause a boy to attend a recognized primary school, satisfies the School Committee that he is unable to pay the fees or any part of the fees ordinarily charged in such school, such boy shall be admitted to such school free of charge, or at such reduced fees as the School Committee may determine, for the period during which the guardian is required to cause the boy to attend a recognized primary school.

Remission
of fees.

15. The Commissioner may, with the previous sanction of the ¹[State Government], make rules prescribing—

Power of
Commissioners
to make
rules.

(a) the manner in which the School Committee shall be constituted, the number of its members, its duties and its mode of transacting business ;

(b) the steps which the School Committee may take to secure the attendance of boys at school.

16. The ¹[State Government] may, by notification in the ²[Official Gazette], exempt any class of persons or any community, in any area to which this Act extends, from the operation of this Part.

Exemption
from com-
pulsory
education.

PART IV.

EDUCATION CESS.

17. (1) If the existing resources of any Municipality including any grant from the Government are not sufficient to cover the cost of primary education within the Municipality, the Commissioners, may, with the previous sanction of the ¹[State Government], impose a tax, to be called the "education cess" ; and all amounts derived therefrom shall be devoted solely to the purposes of primary education, whether voluntary or compulsory within the Municipality.

Education
cess.

(2) An education cess shall not be imposed unless the Commissioners by a resolution, passed at a special general meeting convened for the purpose and in favour of which two-thirds of the Commissioners have voted, determine to impose such cess.

¹ See foot-note 2 on page 540, *ante*.

² See foot-note 3 on page 540, *ante*.

(Part IVA.—Compulsory Primary Education of Girls.—Part V.—
Supplemental.—Sections 17A, 18.)

(3) The education cess shall be levied in such manner as may be prescribed by rules made by the ¹[State Government], and the cess so levied shall be a rate amounting to the sum required, after deducting the Government grant, the school receipts and the receipts from endowments and contributions, to meet the expenditure on primary education, together with ten *per cent.* above such sum to meet the collection charges and the probable losses due to non-realization from defaulters.

²PART IVA.

COMPULSORY PRIMARY EDUCATION OF GIRLS.

Compul-
sory pri-
mary edu-
cation of
girls.

³17A. The provisions of this Act relating to the compulsory primary education of boys shall apply *mutatis mutandis* to the compulsory primary education of girls not being less than six or more than ten years of age :

Provided that before making the application referred to in sub-section (1) of section 6 the Commissioner shall submit to the ¹[State Government] a statement containing in respect of girls within the municipality such of the particulars set forth in section 3 as the ¹[State Government] may think fit to require, and shall comply with such directions for the provision of accommodation, staff and equipment and for the management and control of schools as the ¹[State Government] may issue thereon :

Provided also that in the case of an application to introduce compulsory primary education for girls the ¹[State Government] may if it thinks fit refuse the permission referred to in sub-section (2) of section 6.

PART V.

SUPPLEMENTAL.

18. (1) The ¹[State Government] may, after previous publication, make rules to carry out the purposes of this Act.

Power of
State Go-
vernment
to make
rules.

¹ See foot-note 2 on page 540, *ante*.

² Part IVA (section 17A) was inserted by sec. 2 of the Bengal Primary Education (Amendment) Act, 1932 (Ben. Act VII of 1932).

of 1919.]

(Part V.—Supplemental.—Sections 19—21.)

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules prescribing the manner in which—

(a) application under section 6, sub-section (1), shall be made ; and

(b) the education cess shall be levied.

(3) All rules made under this section shall be published in the ²[*Official Gazette*].

19. All primary schools maintained by the Commissioners within a Municipality, or any part thereof, under the provisions of this Act shall be open to inspection free of any charge by the inspecting officers of the Education Department of the ¹[State Government] and such other persons as the ¹[State Government] may appoint in this behalf.

Schools to be open to inspection.

20. Every person authorised by the School Committee under section 13 and every officer and servant of the School Committee, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be deemed public servants.

21. When in the opinion of the ¹[State Government] the Commissioners have made default in any of the requirements of Part III of this Act, the ¹[State Government] may, after considering any explanation of the Commissioners, by notification in the ²[*Official Gazette*], stating the grounds of such order, cancel any notification which has been issued under section 6, ³[sub-section (2)].

Withdrawal of notification on default.

¹See foot-note 2 on page 540, *ante*.

²See foot-note 3 on page 540, *ante*.

³This word, brackets and figure were substituted for the word, brackets and figure "sub-section (1)" by sec. 8 of the Bengal Primary Education (Amendment) Act, 1932 (Ben. Act VII of 1932).

Bengal Act V of 1919

THE BENGAL VILLAGE SELF-GOVERNMENT ACT, 1919

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Bengal Act V of 1919¹

THE BENGAL VILLAGE SELF-GOVERNMENT ACT, 1919²

SUPPLEMENTED

... Ben. Act XX of 1935.

{ Ben. Act VII of 1930.
Ben. Act V of 1931.
Ben. Act IX of 1932.
Ben. Act XVIII of 1932.

AMENDED

{ Ben. Act VIII of 1935.
Ben. Act XIV of 1936.
Ben. Act I of 1939.
Ben. Act V of 1942.
West Ben. Act X of 1947.
West Ben. Act XXVI of 1950.
West Ben. Act XII of 1960.

ADAPTED

... { The Government of India (Adap-
tation of Indian Laws) Order,
1937.
The Indian Independence (Adap-
-tation of Bengal and Punjab
Acts) Order, 1948.
The Adaptation of Laws Order,
1950.

(28th May, 1919.)

An Act to develop self-government in the rural areas of Bengal.

WHEREAS it is expedient to develop the system of self-government in the rural areas of Bengal ;

AND WHEREAS the sanction of the Governor General has been obtained under section 79, sub-section (2) and sub-section (3) of the Government of India Act, 1915, to the passing of this Act,

It is hereby enacted as follows :—

S & G Geo.
V, c. 61.

PART I.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Village Self-Government Act, 1919.

(2) It extends to the whole of ^a[West Bengal], except the town of Calcutta and any area which has been or may hereafter be constituted a municipality, under the provisions of the Bengal Municipal Act, [1932]⁴.

Short title,
local
extent and
commence-
ment.

Ben. Act
XV of
1932.

¹This Act should be read with sec. 4 and Sch. I of the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957).

In terms of the provisions of sub-section (3) of section 3 read with Schedule III of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (West Ben. Act XIX of 1958), this Act shall not extend to, or come into force in, the territories transferred from the State of Bihar to the State of West Bengal by sec. 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

²For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1918, Pt. IV, pages 117 and 118, and for proceedings in Council, see *ibid*, Pt. IV-A, pages 665—672 and 1188—1193, and see the *Calcutta Gazette* of 1919, Pt. IV-A, pages 80—84, 127—146, 315—316 and 688—912.

³The words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The figures "1932" were substituted for the figures "1884" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

[Ben. Act V

(Part I.—Chapter I.—Preliminary.—Section 2.)

(3) It shall come into force in such districts or such parts of districts and on such date as the ¹[State Government] may, by notification, direct, and the ¹[State Government] may, by notification, withdraw this Act from any district or part of a district.

Explanation.—The words “the town of Calcutta” mean ²[subject to the inclusion of any local area under section 543] of the Calcutta Municipal Act, 1923³, and subject to the provisions of section 147 of the Calcutta Improvement Act, 1911, the area described in schedule I to the Calcutta Municipal Act, 1923³ :

Ben. Act
III of 1928.
Ben. Act
V of 1911.

Provided that this Act shall not come into force in any cantonment⁴ * * * *

Repeal and
amend-
ment of
certain
enact-
ments ;
saving of
certain
provisions.

2. (1) When any local area is declared to be a union under section 5, the enactments specified in schedule I shall, from the date of election or appointment of the first president of the union board of that union, be repealed or amended to the extent and in the manner mentioned in the fourth column thereof :

Provided that until a new assessment is made under this Act, any assessment, rate or tax which was in force in such area under the provisions of the Bengal Local Self-Government Act of 1885, in so far as they relate to union committees, and of the Village Chaukidari Act, 1870, shall continue to be in force and all sums due on account of such rate or tax shall be realized under the provisions of this Act, and shall be credited to the union fund, and may be expended by the union board by which they are realized.

Ben. Act
III of
1885.
Ben. Act
VI of 1870.

(2) When, in consequence of the repeal of the enactments referred to in sub-section (1), any panchayat or union committee ceases to exist, all the properties, funds and dues which are vested in such panchayat or union committee shall be vested in such union board or boards, and in accordance with such allocation, as may be determined by the district magistrate, whose orders thereon shall be final.

¹The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words and figures were substituted for the words and figures “subject to the exclusion or inclusion of any local area by notification under section 637” by sec. 2 and the First Schedule to the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). This reference should now be construed as a reference to section 592 of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

³The figures “1928” were substituted for the figures “1899” by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). The Calcutta Municipal Act, 1928 (Ben. Act III of 1928), was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to the latter Act.

⁴The words “without the sanction of the Governor General in Council previously obtained” in the proviso to section 1 were omitted by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1919.]

(Part I.—Chapter 1.—Preliminary.—Sections 3, 4.)

3. When the provisions of this Act are withdrawn from any district or part of a district under section 1, sub-section (3), the enactments specified in schedule I shall be deemed to be revived in such district or part to the extent to which they were modified by that schedule, from the date of the publication of the notification of withdrawal :

Effect on certain enactments when Act is withdrawn.

Provided that all assessments for the imposition of rates under section 37 shall continue to be in force until a new assessment is made in accordance with the provisions of the Village Chaukidari Act, 1870, and all properties, funds and other dues vested in any union board within such district or part of a district shall be vested in such local authorities, panchayats or persons and in such manner as may be determined by the district magistrate, whose orders thereon shall be final.

Ben. Act
VI of 1870.

4. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

- (1) "building" includes a hut and shed ;
- (2) "circle officer" means any person who may be appointed by the ¹[State Government] to exercise the powers and perform the duties of a circle officer under this Act ;
- (3) "dafadar" means a head chaukidar ;
- (4) "district board" means a district board established under the Bengal Local Self-Government Act of 1885 ;
- (5) "district magistrate" includes an additional district magistrate ;
- (6) "local board" means a local board established under the Bengal Local Self-Government Act of 1885, as amended by this Act ;
- (7) "notification" means a notification published in the ²[Official Gazette] ;
- (8) "road" means any road, street or passage, whether a thoroughfare or not, over which the public have a right of way ;
- (9) "subdivisional magistrate" means any magistrate in charge of a subdivision of a district ³[and includes an additional subdivisional magistrate] ;

Ben. Act
III of
1885.

¹ See foot-note 1 on page 554, ante.

² The words "Official Gazette" were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ These words were added by section 2 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

[Ben. Act V.]

(Part I.—Chapter II.—Union boards.—Sections 5, 6.)

- ¹(9a) "tout" means a person who habitually frequents the precincts of a union bench or union court except—
- (a) for the purpose of his own case, suit or proceedings before such bench or court, or
 - (b) as an agent of a party authorised to appear under section 97 ;
- (10) "year" means a year beginning on the first day of April or on such other date as may hereafter be fixed for any union board by the ²[State Government] by notification ; and
- (11) the expressions "non-bailable offence," "cognizable offence," "complaint," "offence," "officer in charge of a police-station" and "police-station," have the same meaning as in section 4 of the Code of Criminal Procedure, 1898, and the expressions "decree," "legal representative" and "moveable property," have the same meaning as in section 2 of the Code of Civil Procedure, 1908.

Act V of 1898.

Act V of 1908.

CHAPTER II.

UNION BOARDS.

Power of State Government to declare local areas to be unions.

Establishment and constitution of union board.

5. When this Act has come into force in any district or part of a district, the ²[State Government] may, after consideration of the views of the district Board and the local boards, ³[if any], by notification, divide that district or part into as many local areas as may to [it] seem expedient, and may, by notification, declare every such local area to be a union for the purposes of this Act.

6. (1) The ²[State Government] shall, by notification, establish a union board for every union constituted under section 5, and shall fix the number of members of each union board :

Provided that the number of members of a union board shall not be less than six or more than nine.

(2) The members shall be elected within such time and in such manner as may be prescribed by rules under section 101.

* * * * *

⁴(4) If on the date fixed for the election, the electors of any union board fail to elect any member or members the vacancy or

¹Clause (9a) was inserted by section 18 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

²See foot-note 1 on page 554, *ante*.

³The words "if any" were inserted by section 11 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936).

⁴This word was substituted for the word "them" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Sub-section (3) including the proviso was omitted by section 2(a) of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

⁶This sub-section was substituted for the original sub-section, *ibid*.

of 1919.]

(Part I.—Chapter II.—Union boards.—Section 7.)

vacancies shall be filled by another election. If for any reason no member or members are elected at such second election, the vacancy or vacancies shall be filled by appointment by the District Magistrate; and any person so appointed shall be deemed to be a duly elected member :

Provided that no person who is not entitled to be elected as a member of the union board under section 7 shall be so appointed.

7. (I) Every ¹* * person of the full age of twenty-one years and having a place of residence within the union,—

Qualifications of voters and members of union board.

(i) who, during the year immediately preceding the election, has paid a sum of not less than ²[eight annas] as cess under the Cess Act, 1880, in respect of lands situated wholly or in part in such union, or

(ii) who, during the year immediately preceding such election, has been assessed at and paid a sum of not less than ³[six annas] for the purposes of the union rate payable under this Act, or in the case of a first election under this Act, as chaukidari-tax, or

(iii) who is a member of a joint undivided family, which, during the year immediately preceding the election, has paid a sum of not less than ⁴[eight annas] as such cess ⁵[or than six annas as such] rate or tax, or⁶

⁶(iv) who is a graduate or licentiate of any university or has passed the matriculation examination of the Calcutta University or a corresponding standard of the same or any other university ⁷[or the school final examination of the Board of Secondary Education, West Bengal, or of any other such Board or the annual examination of Class X of a school recognised by the Board of Secondary Education, West Bengal, or of any other such Board], or the high school examination of the board of intermediate and secondary education, Dacca, or the senior or junior madrasah examinations under the old or the reformed scheme, or the Sanskrit title examination of the Calcutta Sanskrit Association, or the middle English or the

¹The word "male" was omitted by section 2 of the Bengal Village Self-Government (West Bengal Amendment) Act, 1950 (West Ben. Act XXVI of 1950).

²The words "eight annas" were substituted for the words "one rupee" by section 8(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

³The words "six annas" were substituted for the words "one rupee" by section 8(2), *ibid.*

⁴The words "eight annas" were substituted for the words "one rupee" by section 8(3a), *ibid.*

⁵These words were inserted by section 8(3b), *ibid.*

⁶The word "or" at the end of sub-clause (iii) of section 7(1) and this sub-clause (iv) were inserted by section 8(4), *ibid.*

⁷These words were inserted by sec. 2(1) of the Bengal Village Self-Government (Amendment) Act, 1960 (Ben. Act XII of 1960).

⁸These words were inserted by sec. 2(2), *ibid.*

The Bengal Village Self-Government Act, 1919.

[Ben. Act V

(Part I.—Chapter II.—Union boards.—Section 7.)

middle vernacular examinations ^a[or the annual examination of Class VI of a school recognised by the Board of Secondary Education, West Bengal] or is a registered medical practitioner under the Bengal Medical Act, 1914, or holds a certificate authorising him to practise as a pleader or as a *muktear* or as a revenue agent,

Ben. Act
VI of 1914.

shall be entitled to vote at an election of members of the union board :

Provided that only one member of a joint undivided family qualified under clause (iii) and nominated by the other qualified members of that family shall be entitled to vote on its behalf at any such election.

(2) Every person who is entitled to vote at an election of members of the union board and is resident within the union, shall be entitled to be a member of the union board if duly elected thereto.

¹*Explanation.*—A person shall be deemed to be “resident” within a union within the meaning of sub-section (2) if he has within the limits of such union a place of residence which he visits from time to time or in which he ordinarily resides for not less than three months a year. No person may be so resident within the limits of more than one union at the same time.

²(3) When a local board is abolished under section 36A of the Bengal Local Self-Government Act of 1885, sub-section (1) shall, in its application to the area which was under the authority of the local board at the time of its abolition, be subject to the following modifications, namely :—

Ben. Act
III of
1885.

- (i) in clause (i) for the words “the year immediately preceding the election” the words “such period of twelve months as may be prescribed by rules under section 101” shall be substituted ;
- (ii) in clauses (ii) and (iii) for the words ^a[“the year immediately preceding such election” and the words “the year immediately preceding the election” respectively] the words “the period aforesaid” shall be substituted ; and
- (iii) after the words “election of members of the union board” the words “if his name is included in the electoral roll” shall be inserted.

¹This *Explanation* was substituted for the original *Explanation* by section 8(5) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²Sub-section (3) of section 7 was inserted by section 12 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936), and is in force in areas in which section 12 of the said Act is in force.

^aThese words were substituted for the words “the year immediately preceding the election” by section 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938.)

of 1919.]

(Part I.—Chapter II.—Union boards.—Sections 8—10A.)

8. (1) Every union board shall be presided over by a president, who shall be elected by the members of the union board from among their own number.

President of union board.

(2) If any union board fails to elect a president within the period prescribed by rules under section 101, the district board shall appoint a member of the board to be the president.

9. Every union board may elect one of its members to be the vice-president of the board.

Vice-president of union board.

¹9A. A union board may grant leave of absence to its president or vice-president for any period not exceeding three months in any one year and may elect one of its members to act as president or vice-president during such absence.

Leave of absence to president or vice-president of union board.

10. Notwithstanding anything contained in this Act, no person who is not ²[a citizen of India] shall be qualified to vote at an election of, or to be a candidate for election as a member of, a union board, nor shall such person be [appointed]³ to be a member of such board :

Disqualification of certain persons from

Provided that the ⁴[State Government] may, by notification, exempt from the provisions of this section any person or class of persons who are not ⁵[citizens of India].

voting at election of, or being members of, union boards.

⁶10A. A person shall not be eligible for election or appointment as a member of a union board if such person—

Disqualifications from being a member of a union board.

(a) is an officer or servant of the union board, or

(b) has been ordered to execute a bond in pursuance of proceedings under section 110 of the Code of Criminal Procedure, 1898, or has been convicted by a criminal court of any offence which in the opinion of the ⁴[State Government] involves moral turpitude and which carries with it a sentence of transportation or imprisonment for a period of more than six months, unless the offence for which he was convicted has

Act V of 1898.

¹Section 9A was inserted by section 2 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

²The words "an Acceding State" were originally substituted for the words "any State in India" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter these words within square brackets were substituted for the words "a British subject or a subject of an Acceding State" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The word "appointed" was substituted for the word "nominated" by section 4 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴See foot-note 1 on page 554, *ante*.

⁵The words "an Acceding State" were originally substituted for the words "any State in India" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter these words within square brackets were substituted for the words "British subjects or subjects of an Acceding State" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁶Section 10A was inserted by section 5 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter II.—Union boards.—Sections 11—13.)

been pardoned or five years have expired from the date of the expiration of the period specified in the bond, or of the sentence, as the case may be :

Provided that, on application made by a person disqualified under clause (b), the ¹[State Government] may remove the disqualification by an order made in this behalf.

Term of
office of
members.

11. The term of office of a member of a union board shall be ²[four years] from the date on which the district magistrate shall declare the board to be duly constituted, but shall include any period which may elapse between the expiration of the said ³[four years] and the date of the first meeting, at which a quorum is present, of the newly elected ⁴* * * members after the next general election for the union board :

⁴Provided that the tenure of office of the former president of the union board shall continue until a new president is elected or appointed under section 8.

Power to
remove
members.

12. (1) The district board may remove any member of a union board from his office—

- (a) who is convicted of any non-bailable offence ; or
- (b) who refuses to act, or becomes incapable of acting, or is declared to be insolvent ; or
- (c) who has been declared by notification to be disqualified for employment in the public service ; or
- (d) who, without an excuse sufficient in the opinion of the district board, absents himself from six consecutive meetings of the union board ; or
- (e) who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, if two-thirds of the total number of the members of the union board at a meeting recommend his removal.

(2) No person who has been removed from his office under clause (a) or clause (c) of sub-section (1) shall be eligible for re-election or re-appointment ⁵[for the purpose of sub-section (4) of section 6].

Filling of
casual
vacancies.

13. When the place of ⁶[a member] of a union board becomes vacant by his removal, resignation or death, a new member shall be elected ⁷* * * in the manner prescribed by rules under section

¹ See foot-note 1 on page 554, *ante*.

² These words were substituted for the words "three years" by section 6(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

³ The words "and appointed" were omitted by sec. 3 of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

⁴ This proviso was added by section 6(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁵ These words, figures and brackets were added by section 4 of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

⁶ These words were substituted for the words "an elected or appointed member" by section 5(a), *ibid*.

⁷ The words "or appointed" were omitted by section 5(b), *ibid*.

of 1919.]

(Part I.—Chapter II.—Union boards.—Sections 14—17.)

101, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the union board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the board at the time of the performance of such act was less than the prescribed number.

14. The term of office of a president or vice-president of a union board shall be the residue of his term of office as a member of the union board.

Term of office of president or vice-president.

15. (1) A president of a union board may resign during his term of office by notifying in writing his intention to do so to the chairman of the district board and to the union board ; and on such resignation being accepted by the chairman, shall be deemed to have vacated his office.

Resignation of president, vice-president or member.

(2) A vice-president or a member of a union board may resign during his term of office by notifying in writing his intention to do so to the union board, and on such resignation being accepted by the union board, shall be deemed to have vacated his office.

16. (1) The district board may remove a president of a union board from his office—

Removal of president or vice-president.

(i) if he is convicted of any non-bailable offence ; or

(ii) if he refuses to act, or becomes incapable of acting, or is declared insolvent ; or

(iii) if he is guilty of misconduct or persistent negligence in the discharge of his duties as president of the union board or of any disgraceful conduct, and two-thirds of the total number of the members of the union board at a meeting recommend his removal.

(2) A union board may, on the recommendation of two-thirds of the total number of the members of the board at a meeting, remove its vice-president from his office—

(i) if he is convicted of any non-bailable offence ; or

(ii) if he refuses to act, or becomes incapable of acting, or is declared insolvent ; or

(iii) if he is guilty of misconduct or persistent negligence in the discharge of his duties as vice-president, or of any disgraceful conduct.

17. (1) If a president of a union board dies, resigns or is removed, the union board shall, at a meeting, within a period prescribed by rules under section 101, elect from among its members ¹[another person to be] president.

Filling of casual vacancy in office of president or vice-president.

¹These words were substituted for the words "a new" by section 7(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

[Ben. Act V

(Part I.—Chapter II.—Union boards.—Sections 17A—18.)

(2) If any union board fails to elect ¹[another person to be] president within the prescribed period, the district board shall appoint ²[from among members of the union board] ³[another person to be] president.

(3) If a vice-president of a union board dies, resigns or is removed, the union board may, at a meeting, elect from among its members ⁴[another person to be] vice-president.

Bar to interference by courts in election matters.

⁵17A. No election of a member of a union board shall be called in question in any court, and no court shall grant an injunction—

- (i) to postpone the election of a member of a union board, or
- (ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a union board of which he has been elected a member, or
- (iii) to prohibit the members formally elected or appointed ⁶[under sub-section (4) of section 6] for a union board from entering upon their duties.

Election disputes.

⁷17B. If any dispute arises as to the election of a member of a union board, the matter shall be referred to the district magistrate who shall decide the same after giving notice to the parties concerned and after taking such evidence as may be produced. The order of the district magistrate shall, within thirty days from the date thereof, be subject to revision by the commissioner whose decision shall be final and shall not be questioned in any court.

Validation of acts and proceedings.

⁸17C. No act done or proceeding taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the union board, or
- (b) any defect or irregularity not affecting the merits of the case.

Incorporation of union boards.

18. Every union board shall be a body corporate by the name of "the union board of (name of union)," and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire or hold property, both movable and immovable, and, subject to any rules made under section 101, to transfer any such property held by the board and to contract and do all other things necessary for the purposes of this Act.

¹These words were substituted for the words "a new" by section 7(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by section 7(2), *ibid.*

³Sections 17A, 17B and 17C were inserted by section 8, *ibid.*

⁴These words, figures and brackets were inserted by section 6 of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

of 1919.]

(Part I.—Chapter II.—Union boards.—Chapter III.—Dafadars and Chaukidars.—Sections 19—22.)

19. Every road, building or other work constructed by a union board from the union fund shall be vested in the union board by which it has been constructed.

Works constructed by a union board to vest in the board.

CHAPTER III.

DAFADARS AND CHAUKIDARS.

20. (1) The union board shall, when a vacancy exists, nominate a person to be a dafadar or a chaukidar under this Act, and the ¹[State Government] shall, if satisfied with such nomination, appoint such nominee :

Appointment and dismissal of dafadars and chaukidars.

Provided that, if the union board fails within a reasonable time to nominate a person to be a dafadar or a chaukidar, or, if the ¹[State Government] is not satisfied with such nomination, the ¹[State Government] shall appoint any person, whom ²[it] thinks fit, to be a dafadar or a chaukidar.

(2) The district magistrate, or the union board with the sanction of the district magistrate, may dismiss any dafadar or chaukidar.

21. (1) The number of dafadars and chaukidars to be employed in a union, the salary to be paid to them and the nature and cost of their equipment shall be determined from time to time by the district magistrate after consideration of the views of the union board.

Numbers and salaries of dafadars and chaukidars.

(2) The salaries and the cost of equipment of dafadars and chaukidars shall be paid by the union board, and the dafadars and chaukidars shall receive their salaries and equipment at such times and in such manner as may be prescribed by rules under section 101.

22. Any dafadar or chaukidar who is guilty of any wilful misconduct in his office, or neglect of his duty, such misconduct or neglect not being of so grave a character as in the opinion of the district magistrate or the union board, as the case may be, to require his dismissal, shall be liable to be punished by the district magistrate with fine not exceeding the amount of one month's salary or by the union board with fine not exceeding one quarter of a month's salary.

Power to fine dafadars and chaukidars.

¹The words "Provincial Government" were originally substituted for the words "district magistrate" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The word "it" was substituted for the word "he" by paragraph 5(9) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act V

(Part I.—Chapter III.—*Dafadars and Chaukidars.*—
Section 23.)Powers and
duties of
dafadars
and
chaukidars.

23. (1) Every chaukidar shall exercise the following powers and perform the following duties :—

(i) he shall give immediate information to the officer in charge of the police-station within the limits of which the union is situated and to the president of the union board, of every unnatural, suspicious or sudden death which may occur, and of any offence specified in schedule II which may be committed within the union, and he shall keep the police and the president of the union board informed of all disputes which are likely to lead to a riot or serious affray ;

(ii) he may, without an order from a magistrate and without a warrant, arrest—

(a) any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned ;

(b) any person having in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

(c) any person who has been proclaimed as an offender either under the Code of Criminal Procedure, 1898, or by order of the ¹[State Government] ;

Act V of
1898.

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing ;

(e) any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

²(f) any person reasonably suspected of being a deserter from ³[the Indian] Army, Navy or Air Force ; and

(g) any released convict committing a breach of any rule made under section 565, sub-section (3), of the Code of Criminal Procedure, 1898 ;

(iii) he shall, to the best of his ability, prevent, and he may interpose for the purpose of preventing, the commission of any offence specified in schedule II ;

(iv) he shall assist private persons in making such arrests as they may lawfully make, and he shall report such arrests without delay to the officer in charge of the aforesaid police-station ;

¹See foot-note 1 on page 554, ante.

²Sub-clause (f) was substituted for the original sub-clause (f) by section 9(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

³The words "the Indian" were substituted for the words "His Majesty" by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1960.

of 1919.]

(Part I.—Chapter III.—Dafadars and Chaukidars.—
Sections 24, 25.)

(v) he shall observe, and, from time to time, report to the said officer the movements of all bad characters within the union ;

(vi) he shall report to the said officer the arrival of suspicious characters in the neighbourhood ;

(vii) he shall report in such manner as may be prescribed by the district magistrate the births and deaths which have occurred within the union ;

¹(viii) he shall give immediate information to the union board of the outbreak of any epidemic disease among men or cattle ;

(viii) he shall supply any local information which the district magistrate or any police-officer may require ;

(ix) he shall obey the orders of the union board in regard to keeping watch within the union and in regard to other matters connected with his duties as chaukidar ;

(x) he shall give immediate information to the union board of any offence under sub-section (4) of section 30 and of any encroachment on, or obstruction to, any road or waterway within the union and of any damage to any property under the control of the union board ;

(xi) he shall assist the person collecting the union rate in making such collection ;

(xii) he shall serve such processes upon persons resident within the union as may be prescribed by rules under section 101 ; and

(xiii) he shall carry out such other duties as may be entrusted to him from time to time in accordance with the Act or any rules made hereunder.

(2) Every dafadar shall exercise all the powers conferred on a chaukidar under sub-section (1) and shall perform such duties as may be imposed upon him by rules made under section 101.

24. Whenever a dafadar or chaukidar arrests any person under section 23, he shall forthwith take the person so arrested to the police-station within the limits of which the union is situated :

Procedure
on arrest
by dafadar
or chauki-
dar.

Provided that, if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

25. All fines realized from a dafadar or chaukidar under section 22 of this Act shall be credited to a district chaukidari reward fund, the control over which shall rest with the district magistrate.

Fines to be
credited to
district
chaukidari
reward
fund.

¹Clause (viii) was inserted by section 9(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter IV.—Powers and duties of union boards.—Section 26.)

CHAPTER IV.

POWERS AND DUTIES OF UNION BOARDS.

Duties of
union
boards.

26. Every union board—

(1) (a) shall take such action as is necessary to secure the due performance by the dafadars and chaukidars of the union of the duties imposed on them under this Act, and shall exercise a general control over them ;

(b) shall provide, as far as possible, for the sanitation and conservancy of the union and for the prevention of public nuisances therein ;

(c) shall make special arrangements for the sanitation and conservancy of fairs and *melas* held within the union ;

(d) shall have control of all drains and other conservancy works within the union which are not under the control of any other authority ;

(e) shall execute all works that are necessary for the preservation of public health and for improving the sanitation, conservancy or drainage of the union ;

(f) shall supply any local information which the district magistrate or the district board or local board may require ; and

(g) shall perform all such other acts as may be necessary to carry out the purposes of this Act ;

(2) shall perform such functions as may be transferred to it by notification under section 31 of the Cattle-trespass Act, 1871 ; I of 1871.

(3) if required to do so by the district magistrate, shall provide for the registration of births and deaths within the union under the provisions of the Bengal Births and Deaths Registration Act, 1873 ; Ben. Act IV
of 1873.

(4) shall cause such processes as may be received by the union board for service to be duly served by a dafadar or chaukidar in accordance with rules under section 101 ;^{1*}

²(4a) may undertake and carry out any work necessary for the prevention and scientific treatment of cattle diseases or for the improvement of the breed and health of cattle, and may employ the staff requisite for such purposes ;^{3*}

¹The word "and" was omitted by section 8(a) of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

²Clause (4a) was inserted by sec. (31), *ibid.*

³The word "and" was omitted by section 10 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935.)

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Sections 26A—27.)

¹(4b) may undertake and carry out measures for the improvement and development of cottage industries and may employ the staff requisite for such purpose ;

¹(4c) may undertake and carry out measures for the furtherance of public health within the union and may, subject to any rules made under section 101, employ the staff requisite for such purpose, and may, for such purpose, join with any other union board or boards in the same district in the manner provided in section 32AA ; and

(5) may undertake and carry out any other local work of public utility likely to promote the health, comfort or convenience of the public, and not otherwise provided for in this Act ²[and may employ the staff requisite for such purposes].

³26A. The union board shall immediately on receipt of information of the outbreak of any epidemic disease among men or cattle send simultaneous reports of such information to the district health officer and to the local sanitary inspector of the district board or to the local veterinary assistant surgeon, as the case may be.

Reports of epidemic diseases among men or cattle.

⁴26B. The Union Board may, with the approval of the chairman of the district board and subject to any rules made under section 101, grant rewards to medical practitioners or other persons for giving prompt information to the union board of the outbreak of any epidemic disease among men or cattle.

Power of union boards to grant rewards for information of the outbreak of any epidemic diseases among men or cattle.

27. (1) If it appears necessary to improve the sanitary condition of the union or any part thereof—

(a) the union board may, or, under the orders of the district board, shall—

(i) cause huts or privies to be removed either wholly or in part ;

(ii) cause private drains to be constructed, altered or removed ;

(iii) cause public drains to be constructed, altered or removed ;

Power of union board as to sanitation, conservancy and drainage.

¹Clauses (4b) and (4c) were inserted by section 10 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by section 3(b) of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

³Sections 26A and 26B were inserted by section 11 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter IV.—Powers and duties of union boards.—
Section 27.)

(iv) cause—

any well, pool, ditch, tank, pit or pond, or any place containing or used for the collection of any drainage, filth or stagnant water, which appears to be injurious to health or offensive to the neighbourhood or in any other respects a nuisance, to be filled up, cleansed or deepened or the water to be drained off or removed therefrom, or such other action to be taken therewith as may be deemed necessary ;

(v) cause any land, which by reason of thick vegetation, undergrowth or jungle appears to be in a state injurious to health or offensive to the neighbourhood or to form an impediment to efficient ventilation, to be cleared of such vegetation, undergrowth or jungle ;

(vi) cause burning ghats and burial grounds to be established ; and

(vii) cause such other improvements to be made as are necessary to improve the sanitary condition of such union or part ; and

(b) the union board may, by written notice, require, within a reasonable period to be specified therein,—

(i) the owner or occupier of any hut, or the owner of any privy to remove such hut or privy either wholly or in part ; or

(ii) the owner or occupier of any building to construct private drains therefor or to alter or remove private drains thereof ; or

(iii) the owner or occupier of any land or building to which any such well, pool, ditch, tank, pit, pond or place as is referred to in clause (a) (iv) pertains, or if any such land as is referred to in clause (a) (v), to do anything which the union board is itself empowered to do under either of those clauses.

(2) If any work required by any such notice is not executed within the period specified in the notice, the union board may itself cause such work to be carried out, and may recover the cost of such work or part thereof from the owner or occupier referred to in clause (b) of sub-section (1), as if it were an arrear of rate imposed under section 37.

(3) An appeal shall lie against every notice issued under clause (b) of sub-section (1), to the chairman of the district board, who, after giving the owner and occupier full opportunity of adducing evidence and of being heard, may make an order cancelling, modifying or confirming the said notice. Such appeal shall be filed within fifteen days from the date of service of the notice.

of 1919.]

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Section 28.)*

¹(4) Without prejudice to the provisions of sub-section (2), if any person fails without sufficient reason to comply with a notice issued under clause (b) of sub-section (1) or, in the case of an appeal under sub-section (3), with an order modifying or confirming such a notice within a reasonable period to be specified in such notice or order, as the case may be, he shall be punished with a fine which may extend to twenty-five rupees and to a further fine which may extend to five rupees for each day after conviction during which he so fails.

28. (1) A union board may employ an establishment for the cleansing of the union or any part thereof.

Power of
union
board as
to cleansing
of unions.

(2) Where no such establishment is employed by a union board, the board may, by written notice, require owners or occupiers of land in the union to cleanse such land to the satisfaction of the board within a reasonable period, to be specified in the notice.

(3) If any person on whom notice has been served under sub-section (2) fails to comply with the requisition contained in the notice, the union board shall, unless reasonable cause to the contrary is shown,—

(a) cause the land to be cleansed, and

(b) recover from such person such portion of the cost of such cleansing as the union board may direct, as if it were an arrear of rate imposed under section 37.

(4) An appeal shall lie against every notice issued under sub-section (2) to the chairman of the local board, ²[or, where there is no local board, to the chairman of the district board,] who, after giving the owner and occupier full opportunity of adducing evidence and of being heard, may make an order cancelling, modifying or confirming the said notice. Such appeal shall be filed within fifteen days from the date of service of the notice.

³(5) Without prejudice to the provisions of sub-section (3), if any person fails without sufficient reason to comply with a notice

¹Sub-section (4) was added by section 12 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by section 13 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This amendment is in force in the areas in which section 13 of Ben. Act XIV of 1936 is in force.

³This sub-section was added by section 13 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Section 29.)*

issued under sub-section (2), or, in the case of an appeal under sub-section (4), with an order modifying or confirming such a notice within a reasonable period to be specified in such notice or order as the case may be, he shall be punished with a fine which may extend to twenty-five rupees and to a further fine which may extend to five rupees for each day after conviction during which he so fails.

Power
of union
board
to control
erection of
buildings,
etc.

29. (1) The union board may, subject to rules made under section 101, by written order,—

(a) direct, in accordance with a scheme approved by the local board ¹[or, where there is no local board, by the district board,] for any part of the union, that no building, wall or platform shall be erected, re-erected or added to in advance of an alignment to be prescribed by the union board and demarcated on the ground ; and

(b) prescribe, in accordance with the said scheme, the space which shall intervene between any new or enlarged building and the building next adjacent and between any new or enlarged building and any road in the union.

(2) Where any building, wall or platform has been placed in contravention of an order passed by the union board under sub-section (1), the union board may apply to the district magistrate and such magistrate may make an order—

(i) directing either that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished by the owner of the building, wall or platform, or that it be altered by him to the satisfaction of the union board, within such time as may be fixed by the district magistrate ; or

(ii) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished or altered by the union board at the expense of the owner within such time as may be fixed by the district magistrate :

Provided that the magistrate shall not make any such order without giving the owner full opportunity of adducing evidence and of being heard.

¹These words were inserted by section 14 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). It is in force in the areas in which sec. 14 of Ben. Act XIV of 1936 is in force.

of 1919.]

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Section 30.)*

(3) If any person to whom a direction to demolish or alter any building, wall or platform, is given under clause (i) of sub-section (2), fails to obey the same, he shall be liable to a fine which may extend, in the case of a masonry building, wall or platform, to one hundred rupees, and, in the case of any other building, wall or platform, to twenty rupees, and to a further fine which may extend, in the case of a masonry building, wall or platform, to ten rupees and in the case of any other building, wall or platform, to two rupees for each day during which, after the period fixed by the district magistrate, he fails to obey the direction to demolish or alter the building, wall or platform.

30. (1) A union board may provide the union or any part thereof, with a supply of water, proper and sufficient, for public and private purposes ; and, for such purposes, may, or, under the orders of the district board, shall,—

Power of union board to provide for proper water-supply.

- (a) construct, repair and maintain tanks or wells, and clear out streams or water-courses ;
- (b) with the sanction of the ¹[State Government] and subject to such rules as may be made under section 101, construct, repair and maintain water works ;
- (c) purchase or acquire by lease or gift any tank, well, stream or water-course, or any right to take or convey water within or without the union ;
- (d) with consent of the owner thereof, utilize, cleanse or repair any tank, well, stream, or water-course within the union, or provide facilities for obtaining water therefrom ;
- (e) contract with any person for a supply of water ; or
- (f) do any other acts necessary for carrying out the purposes of this section.

(2) The union board may, by order published at such places as it may think fit, set apart for the supply to the public of water for drinking or culinary purposes any tank, well, stream or water-course in respect of which action has been taken under clause (a), (c) or (d) of sub-section (1), subject to any rights which the owner referred to in clause (d) of that sub-section may retain with the consent of the board.

(3) The union board may, by order published at such places as it may think fit, prohibit all bathing, washing of clothes and animals, or other acts calculated to pollute the water of any tank, well, stream, or water-course set apart for drinking or culinary purposes under sub-section (2).

¹See foot-note 1 on page 554, *ante*.

*(Part I.—Chapter IV,—Powers and duties of union boards.—
Sections 31, 31A.)*

(4) Any person who disobeys an order issued under subsection (3), shall be punished with fine which may extend to twenty-five rupees.

Powers of
union
board as to
roads,
bridges
and
water-
ways.

31. The union board shall have control of all roads, bridges and water-ways within the union, not being private property and not being under the control of the ¹[State Government] or the district board or local board, and may do all things necessary for the maintenance and repair thereof, and may—

- (a) lay out and make new roads ;
- (b) construct new bridges ;
- (c) divert, discontinue or close any road or bridge ;
- (d) widen, open, enlarge or otherwise improve any road or bridge ;
- (e) deepen or otherwise improve water-ways ;²
- (f) provide for the lighting of any road or public place within the union ; and³
- ³(g) with the sanction of the commissioner, undertake small irrigation projects.

Stipends.

⁴31A. The union board may grant a stipend to any student having a place of residence within the union who is pursuing his studies in any—

- (i) middle English school,
- (ii) high English school, or
- (iii) other secondary school,

which holds agricultural classes, and who attends such classes or in any technical or agricultural school.

¹See foot-note 1 on page 554, *ante*.

²The word "and" in clause (e) was transposed at the end of clause (f) by section 2(1) of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

³Clause (g) was inserted by section 2(8), *ibid*.

⁴Section 31A was inserted by section 14 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part 1.—Chapter IV.—Powers and duties of union boards.—
Sections 32, 32A.)

Establish-
ment of
primary
schools and
dispen-
saries.

¹32. ²[(1)]. The union board may, subject to any rules made under section 101, ³[make grants to primary schools], establish primary school or dispensaries, or assume charge of existing primary schools or dispensaries and shall repair, maintain and manage any primary school or dispensary under its charge.

⁴32. ⁵[(1)]. The union board may, subject to any rules made under section 101, establish ⁶* * * * * dispensaries, or assume charge of existing ⁷* * * * * dispensaries, and shall repair, maintain and manage any ⁸* * * * * dispensary under its charge.

Establish-
ment of
dispen-
saries.

⁹(2) The union board may, subject to any rules made under section 101, make grants to—

- (a) any dispensary under public or private management, or
- (b) any library or reading room maintained for the public benefit and open to the public, and on the managing authority of which the union board is represented.

¹⁰32A. ¹¹(1) Subject to the provisions of the Bengal (Rural) Primary Education Act, 1930, and to the control of the district school board constituted under that Act, the union board may establish primary schools or assume charge of existing primary schools and shall repair, maintain and manage any primary school under its charge.

Establish-
ment and
manage-
ment of
primary
schools.

Ben. Act
VII of
1930.

¹²This sub-section (1) of section 32 is in force in this form in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930.) is not in force.

¹³Section 32 was renumbered as sub-section (1) of section 32 by section 4 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

¹⁴These words were inserted by section 15 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

¹⁵This sub-section (1) of section 32 is in force in this form in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), is in force.

¹⁶The words "primary school or" and "primary schools or" in section 32 (1) were omitted by section 67 and the Schedule, *ibid*.

¹⁷This sub-section (2) was substituted for the sub-section (2) which was added by the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931), by section 3 of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

¹⁸Section 32A was inserted by section 67 of, and the Schedule to, the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), and is in force in areas where the said Act is in force.

¹⁹Section 32A was renumbered as sub-section (1) of section 32A and sub-section (2) was added by section 16 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

[Ben. Act V

(Part I.—Chapter IV.—Powers and duties of union boards.—
Sections 32AA—34.)

¹(2) The union board may, subject to any rules made under section 101, and to the control of the district school board constituted under the Bengal (Rural) Primary Education Act, 1930, make grants to primary schools which are recognised under section 54 of the said Act.

Ben. Act
VII of
1930.

Joint
committees.

²32AA. A union board may, with the previous sanction of the district board and subject to any rules made under section 101, join with any other union board or boards in the same district in constituting out of their respective bodies a joint committee for any purpose in which they are jointly interested and in delegating to any such joint committee any power which might be exercised by either or any of the boards concerned.

Transfer of
certain
duties from
the district
or local
board to a
union
board.

33. The district board or local board may, from time to time, with the consent of the union board, make over to a union board, subject to such conditions as they may deem necessary, the management of any institution or the execution of any work or duty within the area over which the union board has control ; and thereupon such union board shall do all things necessary for the management of the institution or the execution of the work or duty :

Provided the fund necessary for the management of the institution and the execution of the work or duty shall be placed by the district board or local board at the disposal of the union board.

Prohibition
of
certain
offensive
and dan-
gerous
trades,
without
licenses.

³34. (1) No place within a union shall be used without a license granted by the union board (which shall be renewable annually) for any trade or business declared by the "[State Government] by notification to be offensive or dangerous.

(2) In every notification under sub-section (1) the "[State Government] shall specify the maximum amount of fees which may be levied by a union board for a license in respect of any trade or business declared in such notification to be offensive or dangerous.

¹Sub-section (2) was added by section 16 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935). See foot-note 8 on page 573, ante.

²This section 32AA was inserted by sec. 5 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

³This section 34 was substituted for the original section by section 17 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴See foot-note 1 on page 554, ante.

of 1919.]

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Section 35.)*

(3) Subject to the approval of the district magistrate, the union board may levy in respect of any license granted by it under subsection (1) a fee not exceeding the maximum amount specified under sub-section (2), and may impose such conditions in respect of such license as may be considered necessary.

(4) Whoever, in any union, uses without a license any place for the purpose of any trade or business declared under subsection (1) to be offensive or dangerous, or fails to comply with any condition subject to which a license is granted under that sub-section, shall be punished with a fine which may extend to twenty-five rupees, and to a further fine which may extend to five rupees for each day after conviction during which he continues so to offend.

(5) The union board, upon the conviction of any person for failing to comply with any condition of a license granted under sub-section (1), may suspend or cancel such license.

(6) An appeal shall lie to the district magistrate against every order by a union board refusing, suspending or cancelling a license, or imposing conditions in respect of a license within thirty days from the date of such order, and the decision of the district magistrate thereon shall be final.

35. The union board, or any member, officer or servant thereof, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection or execute any work for the purposes of, or in pursuance of

Power of
entry.—

section 26, 27, 28, 29, 30, 31, 32, 33 or 34 :

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours previous written notice signed by the president or vice-president of the intention to make such entry ; and
- (c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

¹The words, brackets and figures "clause (1) of section 26 or" were omitted by section 18 (1) of the Bengal Village Self-Government (Amendment) Act, 1985 (Ben. Act VIII of 1985).

²The figures "26" were inserted by section 18 (2), *ibid.*

[Ben. Act V]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Chapter V.—Union fund.—Sections 36, 37.)

Appoint-
ment of
establish-
ment for
union.
board.

36. ¹[Subject to the approval] of the local board, ²[or where there is no local board, of the district board,] a union board may appoint such staff of officers and servants as it may consider necessary to carry out its duties under this Act, and may fix the salaries to be paid to such staff :

³Provided that no member of a union board shall be appointed to be an officer or servant of such union board.

CHAPTER V.

UNION FUND.

Imposition
of union
rate.

37. The union board shall impose yearly on ⁴[persons who are owners or occupiers or owners and occupiers] of buildings, within the union, a rate amounting to—

- (a) the sum required, after deduction of the contribution, if any, made by the ⁵[State Government] in this behalf, for the salaries and equipment of the dafadars and chaukidars and the salaries of the establishment of the union board, and
- (b) the sum estimated to be required to meet the expenses of the board in carrying out any of the other purposes of this Act, if such estimate has been approved by ⁶[more than half] the total number of the members of the board at a meeting specially convened for the purpose,

together with ten *per cent.* above such sums to meet the expenses of collections and the losses due to non-realization of the rate from defaulters.

¹These words were substituted for the words "With the approval" by section 19 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by section 15 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This amendment is in force in the areas in which sec. 15 of Ben. Act XIV of 1936 is in force.

³This proviso was added to section 36 by section 19 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴These words were substituted for the words "the owners or occupiers" by section 20 (1), *ibid.*

⁵See foot-note 1 on page 554, *ante.*

⁶These words were substituted for the words "not less than two-thirds of" by section 20(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VII of 1935).

of 1919.]

(Part I.—Chapter V.—Union fund.—Sections 38—42.)

38. (1) The rate to be imposed by a union board under section 37 shall be an assessment according to ¹[the circumstances within the union and property within the union, if any,] of the persons liable to the same :

Nature of assessment.

Provided that the amount assessed upon any person in any one year shall not be more than eighty-four rupees.

(2) Any person who, in the opinion of the union board, is too poor to pay half an anna a month, shall be altogether exempted from payment of any rate under this Act.

39. The assessment for the imposition of the rate under section 37 shall be made in accordance with rules prescribed under section 101, and any person dissatisfied with the amount at which he has been assessed may, within such time as may be specified in those rules, apply to the union board, either orally or in writing, for a revision of the assessment, and the union board may amend the assessment or confirm the same.

Procedure of assessment and revision thereof by the union board.

40. The district magistrate may, at any time, call for the papers containing the assessment of the union rate imposed under section 37, and may, after such inquiry as may be necessary, pass such orders thereon as he may think proper.

Power of district magistrate to revise assessment.

41. The payment of the rate shall be made in accordance with rules prescribed under section 101, and, in case of default of any such payment, the president of the union board, or, if so directed by him, the vice-president, shall cause the chaukidar or any other person authorized in writing by the president or the vice-president to levy, by the distraint and sale of a sufficient portion of the movable property of the defaulter, the amount of his arrear, together with a sum equal to half the amount of such arrear, by way of penalty.

Arrear to be recovered by distraint and sale of movable property of defaulter.

42. (1) The distraint and sale of such movable property shall be conducted in accordance with rules prescribed under section 101.

What property may be distrained and sold for arrears.

(2) All goods and chattels, except plough-cattle and tools and implements of trade and agriculture, found in or upon any building or land occupied by any defaulter, shall be deemed to be his property, and shall be liable to be distrained and sold for the recovery of the arrear, and also the penalty due under section 41.

(3) If any of the goods and chattels liable to be distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

¹These words were substituted for the words "the circumstances and the property within the union" by sec. 21 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter V.—Union fund.—Sections 43—46.)

Distrain-
and sale of
property
beyond
the limits
of the
union.

¹43. (1) If the union board is unable to recover under section 41 the amount due for the arrear of rate and the penalty, the district magistrate may, on the application of the union board, issue his warrant to any officer of his court for the distress and sale of a sufficient portion of the movable property of the defaulter within any other part of the jurisdiction of the magistrate, or may issue a warrant for the distress and sale of a sufficient portion of the movable property of the defaulter within the jurisdiction of any other magistrate exercising jurisdiction within ²[West Bengal] who shall endorse the warrant so issued and cause it to be executed by an officer of his court.

(2) The provisions of section 42 shall apply to the distress and sale under this section.

(3) In case the amount of penalty realized does not cover the cost of the distress and sale the district magistrate shall realize from the defaulter such cost in addition to the amount due for arrear of rate and the penalty.

(4) On execution of a warrant issued under this section the amount realized shall be remitted to the union board.

Irregu-
larities not
to avoid
distrain-
ment.

44. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any defect, irregularity or want of form in any assessment, notice, summons, power, writing, inventory, or other proceeding relating thereto, nor shall such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them in any court of competent jurisdiction, subject to the provisions of section 64.

Disposal of
surplus
sale-
proceeds.

³44A. The surplus sale-proceeds (if any) under sections 41 and 43 may be paid on demand to any person who establishes his right thereto to the satisfaction of the union board or in a court of competent jurisdiction.

Grants-in-
aid from
district
fund.

45. The district board may make to the union board such grants-in-aid from the district fund, as they may think fit, to enable the union board to carry out any of the purposes of this Act, and may attach to such grants any conditions that may appear to the district board to be desirable :

Provided always that in the case of any union board which has imposed a rate under clause (b) of section 37 the district board shall make a suitable grant-in-aid.

Union
fund.

46. ⁴(1) All sums realized under sections 41 and 42 and all other receipts of the union board, including any donation or contribution from a private person, but not including any sum realized

¹This section 43 was substituted for the original section 43 by section 22 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 2 on page 553, *ante*.

³Section 44A was inserted by section 23 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴Sub-sections (1) and (1a) of section 46 were substituted for the original sub-section (1) by para. 8 and Schedule IV to the Government of India, (Adaptation of Indian Laws) Order, 1957.

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Sections 47, 48,)

as a fine or as a fee, shall be paid into a fund to be called "the union fund" the accounts of which shall be kept in accordance with rules under section 101.

¹(1a) All sums realized as fines or fees under this Act and all sums received by the union bench or union court shall form part of the revenues of the ²[State].

(2) Except as is otherwise provided in this Act, the expenses incurred by the union board, the union bench, or the union court in carrying out the purposes of this Act, including such reasonable compensation as the board may think fit to pay under section 61, shall be paid out of the union fund :

Provided that the salaries and cost of equipment of *dafadars* and *chaukidars* and the salaries of the establishment of the union board shall be the first charge upon the union fund :

Provided also that all sums made over to a union board for any specific purpose shall be applied solely to that purpose.

CHAPTER VI.

GENERAL PROVISIONS RELATING TO UNION BOARDS.

Delegation.

47. The district magistrate may, by an order in writing, delegate the powers or duties specified in the first column of schedule III to the officers mentioned in the second column thereof.

Delegation of district magistrate's powers and duties.

Disputes.

48. (1) If a dispute arises between two or more union boards which are subordinate to the same local board, the matter shall be referred to such local board ; and the decision of the local board thereon shall be final and binding.

Disputes between union boards.

³(2) If a dispute arises between two or more union boards, which are within the same district but which are subordinate to different local boards, the matters shall be referred to the district board ; and the decision of such district board thereon shall be final and binding.

⁴(2) If a dispute, arises in any case to which the provisions of sub-section (1) are not applicable between two or more union boards which are within the same district the matter shall be referred to the district board ; and the decision of the district board thereon shall be final and binding.

¹See foot-note 4 on page 578. *ante*.

²The word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³Sub-section (2) of section 48 is in force in this form in areas in which section 16 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936), is not in force.

⁴Sub-section (2) of section 48 is in force in this form in areas in which section 16 of the said Ben. Act XIV of 1936 is in force.

(Part I.—Chapter VI.—General provisions relating to union boards.—Sections 49—52.)

Disputes between a municipal authority and a union board.

49. If a dispute arises between a municipal authority and a union board within the same district, the matter shall be referred to the district magistrate ; and the decision of the district magistrate thereon shall be final and binding :

Provided that, if the district magistrate is a member of the municipal authority concerned, his functions under this section shall be discharged by the commissioner.

Control.

Local board to superintend the administration of union boards.

¹50. Subject to the control of the district board, a local board shall superintend the administration of union boards within the area under the authority of the local board, except in matters relating to dafadars and chaukidars.

²50. A district board shall superintend the administration of union boards within the area under the authority of the district board, except in matters relating to dafadars and chaukidars :

District board or local board to superintend the administration of union boards.

Provided that, where there is a local board, the local board shall, subject to the control of the district board, exercise such superintendence over the administration of union boards within the area under the authority of the local board.

Supervision of union boards by commissioners and other officers.

51. (1) It shall be the duty of all commissioners, district magistrates, sub-divisional magistrates, circle officers and chairmen of district boards and local boards to see that the proceedings of union boards are in conformity with law and with the rules in force thereunder.

(2) The commissioner may, by order in writing, annul any proceeding which he considers not to be in conformity with law and with the said rules, and may do all things necessary to secure such conformity.

Inspection of union board record.

52. Every union board shall at all times permit the commissioner, the district magistrate, the chairman of the district board or local board, or any other person authorized by them or by the ³[State Government], to have access to all its books, proceedings and records.

¹Section 50 is in force in this form in areas in which section 17 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936), is not in force.

²Section 50 is in force in this form in areas in which section 17 of the said Ben. Act XIV of 1936 is in force.

³See foot-note 1 on page 554, ante.

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Sections 53—55A.)

53. The commissioner, the district magistrate, the chairman of the district board and local board, and any other person authorized by them or by the ¹[State Government] shall have power at all times to enter on and inspect, or cause to be entered on and inspected any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by, a union board.

Inspection of work or property of union board.

54. (1) If at any time the district magistrate is satisfied that the whole or any portion of the salaries, or of the cost of equipment, of *dafadars* and *chaukidars*, or of the salaries of the establishment of a union board, is in arrear, the district magistrate may appoint such person or persons as he may consider necessary to realize any sum so due, together with the incidental cost (if any) of collecting it.

Special provision in case of non-payment of *chaukidars* and staff.

(2) Any person so appointed may realize any such sum and cost either from the balance at the credit of the union fund or by the collection of any outstanding portion of the union rate as assessed by the union board, or, if the amount so collected is insufficient, by the imposition and collection of a supplementary assessment.

(3) A person so appointed shall exercise all the powers vested in the union board for the assessment and collection of the union rate.

(4) The amount collected under sub-section (2) shall be disbursed in the payment of the sum and the cost referred to in sub-section (1) and the balance (if any) shall be paid to the union fund.

55. (1) When a union board makes default in performing any duty imposed on it by the district board under section 27 or section 30, the district board may fix a period for the performance of that duty.

Power to provide for performance of duties under section 27 or 30 in case of default by a union board.

(2) If any such duty is not performed within the period fixed under sub-section (1), the district board may appoint such person or persons, as they consider necessary to perform it, and may direct that the expense of performing it, together with a reasonable remuneration to such person or persons, shall be forthwith paid by the union board.

²55A. If the commissioner, after consideration of the views of the district magistrate and the district board, is of opinion that a union board is not competent to perform, or persistently makes default in the performance of, the duties imposed upon it by or under this or any other Act, or exceeds or abuses its

Power to dissolve a union board.

¹ See foot-note 1 on page 554, *ante*.

²Section 55A was inserted by section 25 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

[Ben. Act V

(Part I.—Chapter VI.—General provisions relating to union boards.—Sections 56, 57.)

powers, the commissioner may, with the approval of the ¹[State Government] by an order in writing specifying the reasons for so doing, direct that a fresh general election shall be held, * * *
 * * * immediately of persons to be members of the union board ; and from the date on which the district magistrate shall declare the board to be duly reconstituted the former members of the board shall, unless they are re-elected or re-appointed, ²[for the purpose of sub-section (4) of section 6] vacate their offices.

Power to remove the president or supersede a union board.

56. (1) If the commissioner, after consideration of the views of the district magistrate and the district board, is of opinion that a union board is not competent to perform, or persistently makes default in the performance of, the duty imposed upon it by, or under, this or any other Act, or exceeds or abuses its powers, the commissioner may ⁴[with the approval of the ¹State Government], by an order in writing specifying the reason for so doing, either—

- (a) remove the president of the union board from his office both as president and as member ; or
- (b) supersede the board for a period to be specified in the order.

(2) Every such order shall be published locally in such manner as may be prescribed by rules under section 101.

Consequences of supersession.

57. (1) When a union board is superseded under section 56 sub-section (1), the following consequences shall ensue :—

- (a) all members constituting the board shall, as from the date of the order, vacate their offices as such members ;
- (b) all powers and duties of the union board shall, during the period of supersession, be exercised and performed by such local authority, person or persons, and in such manner as the commissioner may direct ; and
- (c) all property vested in the union board shall, during that period, vest in such local authority, person or persons, and in such manner, as the commissioner may direct.

(2) On the expiration of the period of supersession the union board shall be re-established by re-election or re-appointment in the manner provided in section 6.

¹See foot-note 1 on page 554, ante.

²The words, "and fresh appointments shall be made" were omitted by section 7(a) of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

³The words, figures and brackets "for the purpose of sub-section (4) of section 6" were inserted by section 7(a), *ibid*.

⁴These words were inserted by section 4 of the Bengal Village Self-Government (Amendment) Act, 1982 (Ben. Act IX of 1982).

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Sections 58—60.)

58. The district magistrate, or the district board, may, by an order in writing, suspend the execution of any order or resolution of a union board within the jurisdiction of such magistrate or district board, or the doing of any act which is about to be done, or is being done, by such union board, if in the opinion of the district magistrate or the district board the execution of the resolution or order, or the doing of the act, is likely to cause injury, or annoyance to the public or to any class or body of persons, or to lead to a breach of the peace.

Power to suspend action of union board.

59. When the district magistrate or the district board makes any order under section 58, the magistrate or board, as the case may be, shall forthwith submit to the commissioner a copy of the order, with a statement of the reasons for making it and with any explanation which the union board concerned may wish to offer, and the commissioner may thereupon confirm, modify or rescind the order.

Order of magistrate or district board under section 58 to be reported to the commissioner.

Miscellaneous.

60. (1) If any member of a union board otherwise than with the sanction of the local board, or if any officer or servant maintained by or employed under the union board, participates or agrees to participate in the profits of any work done by the union board or is concerned or participates in the profits of any contract entered into with the board, he shall be liable on conviction before a criminal court to a fine which may extend to five hundred rupees :

Penalty on member, officer or servant being interested in a contract, made with a union board.

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person—

- (a) having a share in any joint-stock company which shall contract with, or be employed by, or on behalf of, the union board ; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the union board may be inserted ; or
- (c) holding a debenture or being otherwise concerned in any loan raised by, or on behalf of, the union board ; or
- (d) being a member of a society registered under the Co-operative Societies Act, 1912¹, which enters into any contract with the union board.

II of 1912.

(2) Nevertheless it shall not be lawful for a person having any share or interest, such as is described in clauses (a) and (b) of the proviso to sub-section (1), to act as a member of the union board in any matter relating to a contract or agreement between the union board and such company or the manager or publisher of such newspaper.

(3) Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.

¹Now the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940), vide section 5 thereof.

[Beng. Act V]

(Part I.—Chapter VI.—General provisions relating to union boards.—Part II.—Chapter VII.—Union benches and union courts.—Sections 61—65.)

Power to
make
compen-
sation for
damage.

Liability
of
members.

61. Every union board may make compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

62. (1) No member of a union board shall be personally liable for any contract made, or expense incurred, by or on behalf of the board.

(2) Every member shall be personally liable for any wilful misapplication of money entrusted to the union board to which he shall knowingly have been a party, and he shall be liable to be sued for the same by the district board.

Bar to
suits.

63. No suit or other legal proceeding shall lie against a union board, or any member or officer thereof acting under the direction of such board, in respect of anything done lawfully and in good faith and with due care and attention under this Act or any rule made hereunder.

No suit to
be brought
until after
one
month's
notice of
cause of
action.

64. (1) No suit or other legal proceeding shall be brought against any union board or any of its members or officers, or any person acting under its direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such board, and also (if the suit is intended to be brought against any member or officer of the said board, or any person acting under its direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the court shall find for the defendant.

(2) Every such action shall be commenced within three months after the accrual of the cause of action, and not afterwards.

(3) If any union board or person to whom a notice under sub-section (1) is given shall, before a suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

PART II.

CHAPTER VII.

UNION BENCHES AND UNION COURTS.

Union benches.

Constitu-
tion of
union
bench.

65. Whenever a union board has been established for any union, the ¹[State Government] may, by notification, appoint any two or more of the members of the board to be a union bench, during their term of office as members of the board, for the trial,

¹See foot-note 1 on page 551, ante.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—Sections 66, 67.)

in the whole or any part of the union, of the offences specified in schedule IV, if committed within the limits of its jurisdiction¹[or if the case is transferred to the bench by a district magistrate or sub-divisional magistrate].

Act V of
1898.

66. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the union bench shall have jurisdiction concurrent with that of the criminal court within the local limits of whose jurisdiction the union is situated, for the trial of all offences specified in schedule IV, part A, and the union bench may try any offence specified in schedule IV, part B, if the case is transferred to the bench by a district magistrate, sub-divisional magistrate or any other magistrate empowered to receive petitions under section 190 of the Code of Criminal Procedure, 1898 :

Jurisdic-
tion of
union
bench.

Provided as follows :—

- (a) a magistrate before whom a complaint of an offence cognizable by a union bench is brought may transfer the complaint to the union bench ;
- (b) the district magistrate or sub-divisional magistrate may transfer any case from one union bench to another or to any other court subordinate to him ;
- ²(c) the district magistrate or sub-divisional magistrate may, with the consent of the parties, transfer any case cognizable by a union bench, if the place of residence of the complainant is situated in a union for which there is no union bench, to any union bench situated at a distance from such place of residence convenient in the opinion of the magistrate, for the parties and witnesses,

67. A case before a union bench may be instituted by petition made orally or in writing to a member of the union bench. If the petition is made orally, the member shall record the name of the petitioner, the name of the person against whom the petition is brought, the nature of the offence and such other particulars, if any, as may be prescribed by rules under section 101, and shall direct the petitioner to appear before the bench.

How case
may be
instituted.

¹These words were added by section 26 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²Clause (c) of the proviso to section 66 was added by section 27, *ibid*.

[Ben. Act V

*(Part II.—Chapter VII.—Union benches and union courts.—
Sections 68—71.)*

Power of
bench to
dismiss or
to refuse to
entertain
petition.

68. (1) If upon the face of the petition, or on examining the petitioner, the union bench is of opinion that the petition is frivolous, vexatious or untrue, it shall dismiss the case by order in writing.

(2) If at any time it appears to the bench—

- (a) that it has no jurisdiction to try the case, or
- (b) that the offence is one for which the sentence which the bench is competent to pass would be inadequate, or
- (c) that the case is one which should not be tried by the bench,

it shall direct the petitioner to the proper court.

Dismissal
of case for
default.

69. If in any case before a union bench the petitioner fails to appear on the day fixed, or if in the opinion of the bench he shows negligence in prosecuting his case the bench may dismiss the case for default, and such order of dismissal shall operate as an acquittal.

Proceed-
ings
prelimi-
nary to
trial.

70. (1) If the petition be not dismissed the union bench shall, subject to the provisions of section 98, by summons or otherwise, require the accused to appear and answer the petition.

(2) If the accused fails to appear or cannot be found, the bench shall report the fact to the nearest magistrate, who may issue a warrant for the arrest of the accused, and when arrested may forward him for trial to the bench, or release him on bail to appear before it.

(3) The union bench shall, if possible, try the case on the day on which the accused appears or is brought before it; but if that is not possible, the union bench shall release him on his executing a bond for a sum not exceeding twenty-five rupees to appear before the bench on any subsequent day or days to which the trial may be adjourned.

Bar to
appeal
from or
revision of
the order of
union
bench;
but power
to order
retrial.

71. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried by a union bench :

Act V of
1898.

Provided that the district magistrate or subdivisional magistrate, if satisfied that a failure of justice has occurred, may, of his own motion, or on the application of the parties concerned, cancel or modify any order of conviction or of compensation made by a union bench or direct the retrial of any case by a court of competent jurisdiction subordinate to him.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Section 72.)

72. (1) A union bench shall record its decision in writing, and may sentence an offender convicted by it to pay a fine not exceeding twenty-five rupees or in default to imprisonment for a period not exceeding seven days :

Power of union bench to impose fine-or to award compensation.

¹Provided that the ²[State Government] may, by notification, direct that any union bench mentioned therein may sentence any offender convicted by it to pay a fine not exceeding fifty rupees or in default to imprisonment for a period not exceeding fourteen days,

³(1a) When a union bench imposes a fine under sub-section (1), it may, when passing the order, direct that the whole or any part of the fine recovered shall be applied in payment of compensation for any loss or injury caused by the offence.

(2) If a union bench is satisfied that a complaint made before it or transferred to it for trial is vexatious or frivolous, the bench may order the complainant to pay to the accused such compensation, not exceeding twenty-five ⁴[or, in the case of a union bench empowered under the proviso to sub-section (1), fifty] rupees in all, as it thinks fit, or in default may sentence the complainant to simple imprisonment for a period not exceeding seven ⁵[or, in the case of a union bench empowered under the proviso to sub-section (1), fourteen] days.

(3) When a person has been sentenced to imprisonment under sub-section (1) or sub-section (2) in default of such payment, if such fine or compensation be not paid or realized within ten days of the passing of the sentence or order, or within such further time, if any, as the bench may allow, the bench may cause him to be arrested and may commit him to the nearest jail to serve his sentence :

Provided that, notwithstanding anything contained in the Indian Penal Code,—

(a) the fine imposed or compensation awarded by a union bench shall not be realized from any person who has served his term of imprisonment under this section ;

(b) the person serving his term of imprisonment shall be forthwith released, if the fine or compensation is paid before the expiry of the term of imprisonment :

Provided also that no woman shall be sentenced to imprisonment in default of payment of fine or compensation.

⁶(4) * * * *

¹This proviso was added by section 28(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 1 on page 556, *ante*.

³Sub-section (1a) was inserted by section 28(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴These words, brackets and figure were inserted by section 28(3)(a), *ibid*.

⁵These words, brackets and figure were inserted by section 28(3)(b), *ibid*.

⁶Sub-section (4) was omitted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act. V]

(Part II.—Chapter VII.—Union benches and union courts.—
Sections 72A—74.)

Power of
union
bench to
release
certain
offenders
after
admonition
or on
probation
of good
conduct.

¹72A. When any person is convicted by a union bench of an offence punishable under sub-section (1) of section 72 and no previous conviction is proved against him, if it appears to the said bench that, regard being had to the age, character and antecedents of the offender and to the circumstances in which the offence was committed, it is expedient—

(a) that the offender should be released after due admonition, the union bench may, instead of sentencing him to any punishment, release him after due admonition ; or

(b) that the offender should be released on probation of good conduct, the union bench may, notwithstanding anything contained in the Code of Criminal Procedure, 1898, instead of sentencing him at once to any punishment, direct that he be released on his executing a bond for a sum not exceeding fifty rupees to appear and receive sentence when called upon during such period (not exceeding one year) as the union bench may direct, and in the meantime to keep the peace and be of good behaviour.

Act V of
1898.

Power of
union
bench to
permit
com-
pounding
of
offences.

²72B. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the union bench may allow the parties to compound any offence tried by such bench.

Union courts.

Constitu-
tion of
union
court.

73. Whenever a union board has been established for a union the ³[State Government] may, by notification, appoint any two or more of the members of the board to be a union court during their term of office as members of the board, for the trial, in the whole or any part of the union, of all or any of the classes of civil suits specified in section 74.

Jurisdic-
tion of
union
court.

74. Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Act, 1887, the Provincial Small Cause Courts Act, 1887, and the Code of Civil Procedure, 1908, and subject to the provisions of sections 75 and 76, the union court and the ordinary civil court, within the local limits of whose jurisdiction the union is situated, shall have concurrent jurisdiction to try the following classes of suits, namely :—

XII of
1887.
IX of
1887.
Act V of
1908.

(a) suits for money due on contracts,

¹Sections 72A and 72B were inserted by section 29 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 1 on page 556, ante.

of 1919.]

*{Part II.—Chapter VII.—Union benches and union courts.—
Sections 75—77.}*

(b) suits for the recovery of movable property or the value of such property,^{1*}

(c) suits for compensation for wrongfully taking or injuring movable property,²[and

(d) suits for damages by cattle-trespass],

when the value of the suit does not exceed two hundred rupees :

Provided that, on the application of any defendant made in accordance with the provisions of section 81, the court of small causes or court of the munsif, within the local limits of whose jurisdiction the union is situated,—

(i) may withdraw the suit when its value does not exceed twenty-five rupees, and

(ii) shall withdraw the suit when its value exceeds twenty-five rupees,

from a union court for trial by itself.

75. No suit shall lie in any union court—

(1) on a balance of partnership account,

(2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will,

(3) by or ³[against the Government] or public officers in their official capacity,

(4) by or against minors or persons of unsound mind,

(5) for the assessment, enhancement, reduction, abatement, apportionment or recovery of rent of immovable property, or

(6) by a mortgagee of immovable property for the enforcement of the mortgage by foreclosure or sale of the property or otherwise, or by a mortgagor of immovable property for the redemption of the mortgage.

Certain suits not to be tried by union court.

76. No suit shall lie in any union court, unless at least one of the defendants resides within the limits of its jurisdiction at the time of the institution of the suit, and the cause of action has arisen wholly or in part within those limits.

Local limits of jurisdiction of union court.

77. (1) A suit before a union court may be instituted by petition made orally or in writing. If the petition is made orally, the court shall record such particulars as may be prescribed by rules under section 101.

How suit may be instituted.

(2) The plaintiff on instituting his suit shall state the value of the claim.

¹The word "and" in clause (b) was omitted by section 30(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²The word "and" and clause (d) were inserted by sec. 30(2), *ibid.*

³The words "against the Crown" were originally substituted for the words "against Government" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act V

(Part II.—Chapter VII.—Union benches and union courts.—
Sections 78—83.)

Action to
be taken
if suit
not triable
by a union
court.

78. (1) If at any time the union court is of opinion that the suit is barred by limitation, the court shall dismiss the suit by order in writing.

(2) If at any time it appears to the court that it has no jurisdiction to entertain the suit, the court shall direct the petitioner to the proper court.

Dismissal
of suit for
default.

79. If in any suit before a union court the plaintiff fails to appear on the day fixed, or, if in the opinion of the court, he shows negligence in prosecuting his suit, the court may dismiss the suit for default :

Provided that a union court may restore a suit dismissed for default, if within thirty days from the date of such dismissal the plaintiff satisfies the court that he was prevented by sufficient cause from appearing.

Summons
to defend-
ant to
appear and
answer.

80. If on receiving the petition the union court is satisfied that the trial of the suit may be proceeded with, it shall, by summons or otherwise, require the defendant to appear and answer the suit either orally or in writing.

Postpone-
ment on
application
for
transfer.

81. If, before ¹[any evidence is taken in] the suit, the defendant notifies to the union court that he has applied or that he intends to apply under the proviso to section 74 for the transfer of the suit to the court of small causes or the court of the munsif, the union court shall postpone the trial in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon.

Ex parte
decision.

82. If the defendant fails to appear, and the union court is satisfied that he has received notice of the date fixed for the hearing, the court may decide the suit *ex parte* :

Provided that any defendant against whom a suit has been decided *ex parte* may, within thirty days from the date of executing any process for enforcement of the decision, apply, orally or in writing, to the union court to set aside the order ; and the court, if satisfied that the defendant did not receive due notice of the date of hearing or was prevented from appearing by any sufficient cause, shall set aside the decision and shall appoint a day for proceeding with the suit.

No order to
be set
aside
without
notice to
opposite
party.

83. No decision or order of a union court shall be set aside under section 79 or section 82 unless notice in writing has been served by the union court on the opposite party.

¹These words were substituted for the words "the commencement of the hearing of" by section 81 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Sections 84—90.)

84. (1) Subject to the provisions of clauses (3) and (4) of section 75 the union court shall add as parties to a suit any persons whose presence as parties it considers necessary for a proper decision thereof, and shall enter the names of such parties in the register of suits, and the suit shall be tried as between the parties whose names are entered in the said register :

Power of union court to determine necessary parties.

Provided that when any party is added, notice shall be given to him and he shall be give an apportunity of appearing before the trial of the suit is proceeded with.

(2) In all cases where a new party appears under the proviso to sub-section (1) during the trial of a suit, he may require that the trial shall begin *de novo*.

85. No union court shall proceed with the trial of any suit in which the matter directly and substantially in dispute is pending for decision in the same court or in any other court in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, or has been heard and finally decided in a suit between the same parties, or between parties under whom they or any of them claim.

Certain suits not to be tried by union court.

86. When the parties or their agents have been heard and the evidence on both sides considered, the union court shall, by written order, pass such decree as may seem just, equitable and according to good conscience, stating in the decree the amounts payable as fees under section 90, and the amount, if any, paid to witnesses under section 96, sub-section (3), and the persons by whom such amounts are payable.

Decision of union court.

87. A union court in ordering the payment of a sum of money or the delivery of any movable property may direct that the money be paid, or the movable property be delivered, by instalments.

Instalments.

88. The decision of a union court in every suit shall be final as between the parties to the suit :

Provided that the district judge may, on the application of any party to the suit made within thirty days of the decree of the union court, cancel or modify the order of the union court or direct a retrial of the suit by the same or any other union court or by any other court subordinate to him if he is satisfied that there has been a failure of justice.

Decision of union court to be final ; but power to order retrial.

89. If the plaintiff or defendant in any suit dies before the suit has been decided, the suit may, subject to the provisions of clause (4) of section 75, be proceeded with at the instance of, or against, the legal representatives of the deceased plaintiff or defendant, as the case may be.

Death of parties.

¹90. (1) In all suits instituted in a union court a fee of one anna in the rupee shall be payable in advance by the plaintiff on

Fees.

¹This section 90 was substituted for the original section 90 by section 82 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part II.—Chapter VII.—Union benches and union courts.—
Section 91.)

the amount of the claim up to twenty-five rupees, and of half-an-anna for every rupee of the claim above twenty-five rupees, and such fees ^{1*} * * * shall not be paid to either party :

Provided that, if any suit is transferred from a union court under section 74, no further fee shall be payable on this account in the court to which the suit is transferred, ^{2*} * * * and thereafter the provision of sub-section (2) shall, so far as may be, apply to the proceedings in the court to which the suit is transferred.

(2) If the claim is decreed in full, an amount equal to the fee shall be realized from the judgment-debtor together with the amount decreed.

(3) If the claim is decreed in part, an amount equal to a proportionate part of the fee shall be realized from the judgment-debtor together with amount decreed.

(4) Any amount realized under sub-section (2) or sub-section (3) shall be paid to the decree-holder.

Execution
of decree.

91. (1) If the union court granting a decree is unable to effect satisfaction thereof, it shall grant the decree-holder a certificate to that effect stating the amount due to him and the amount due on account of fees under section 90.

(2) Any decree-holder wishing to execute a decree of a union court may apply to the court of the munsif within the local limits of whose jurisdiction the union is situated and shall present with his application a certified copy of the order of the union court; but no application for execution shall be entertained by the munsif—

(a) unless the union court has certified that it is unable to effect satisfaction of the decree, and

(b) unless the application is made after the expiry of three months from the date of the decree.

(3) In executing a decree of a union court a munsif shall have the same powers and follow the same procedure as if he were executing a decree passed by himself. ^{3*} * * *

¹The words "shall, on receipt, be credited to the union fund and" were omitted by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and the fee already paid by the plaintiff shall, notwithstanding anything contained in section 46, be paid from the union fund to the Local Government" in the proviso to section 90 (1), were omitted, *ibid*.

³The words "but any amount realized on account of fees under section 90 shall be credited to the Local Government" were omitted, *ibid*.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Sections 91A—94.)

¹19A. An application for execution of a decree of union court made after the expiry of three years from the date of the decree or of any order under section 88 modifying any such decree, shall be dismissed, although limitation has not been pleaded :

Limitation for execution of decree or order.

Provided that, where the application is made for execution of a decree or order to enforce payment of a sum of money or delivery of any movable property which the decree or order directs to be made at a certain date, the application may be made within three years from that date.

92. [Sums realised in part satisfaction of demand to be distributed rateably.—Rep. by sec. 33 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

General provisions relating to union benches and union courts.

93. (1) The provisions of—

- (a) the Court-fees Act, 1870,
- (b) the Code of Criminal Procedure, 1898, excepting Chapter XXXIII, and
- (c) the Code of Civil Procedure, 1908,

Procedure by union benches and union courts.

shall not apply to any trial, suit or proceeding before a union bench or a union court.

(2) The procedure to be followed by a union bench or a union court in any trial, suit or proceeding and in the enforcement of its decisions and orders, and in the method of forming a quorum shall, subject to the provisions of this Act, be in accordance with rules prescribed under section 101.

94. (1) The union bench and the union court shall be presided over by the president of the union board, if he is a member of the bench or court.

Persons who are to preside over union bench or union court.

(2) If the president of the union board is absent from a sitting of the union bench or court, or if he is not a member of the bench or court, the bench or court, as the case may be, shall elect its own president.

(3) In case of difference of opinion among the members of the bench or court the decision or order of the bench or court shall follow the opinion of the majority of the members present and voting.

(4) In case of an equality of votes, the person presiding over the bench or court shall have a second or casting vote.

²Section 91A was inserted by section 2 of the Bengal Village Self-Government (Second Amendment) Act, 1932 (Ben. Act XVIII of 1932).

VII of
1870.
Act V of
1898.
Act V of
1908.

*(Part II.—Chapter VII.—Union benches and union courts.—
Sections 95—97.)*

Union bench or union court not to try case or suit in which the local union board or any member is interested. Attendance of witnesses.

195. No union bench or union court shall try any case or suit or other proceeding to or in which the local union board or any member thereof is a party or is interested.

96. (1) Subject to the provisions of section 98, a union bench or a union court may, by summons or otherwise, send for any person to appear and give evidence or to produce or cause the production of any document :

Provided that no person who is exempt from personal appearance in court under section 133, sub-section (1), of the Code of Civil Procedure, 1908, shall be required to appear in person before a union court.

Act V of 1908.

(2) A union bench or a union court shall refuse to summon a witness or to enforce a summons already issued against a witness, where, in the opinion of the bench or court, the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(3) A union bench or a union court shall not require any person living outside the union to give evidence, unless such a sum of money be paid to him as appears to the bench or court to be sufficient to defray his travelling and other expenses in passing to and from the bench or court and for one day's attendance.

(4) If any person whom a union bench or a union court summons by written order to appear or give evidence, or to produce any document before it fails to obey such summons a union bench may take cognizance of such offence and may sentence any person convicted thereof to a fine not exceeding twenty-five rupees.

97. (1) The parties to cases triable by a union bench shall appear personally before such bench :

Provided that the union bench, if it sees reason so to do, may dispense with the personal attendance of an accused and permit him to appear by agent.

(2) The parties to suits triable by a union court may appear by agent.

"Agent" in sub-sections (1) and (2) means a full-time servant or a partner or a relative of the party, whom the union bench or union court may admit as a fit person to represent a party, and who is authorised to appear and plead for such party.

Appearance of parties before union bench or union court.

¹This section was substituted for the original section by section 84 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

The Bengal Village Self-Government Act, 1919.

of 1919.]

**(Part II.—Chapter VII.—Union benches and union courts.—
Sections 98—98D.)**

¹(2a) Notwithstanding anything contained in sub-section (1) or sub-section (2) no person whose name is included in a list of touts prepared and published under sub-section (1) of section 98A shall be permitted to appear as an agent of a party before a union bench or union court.

**XVIII of
1879.**

(3) Notwithstanding anything contained in the Legal Practitioners Act, 1879, legal practitioners shall not be permitted to practise before a union bench or union court.

98. No woman shall, against her will, be compelled to appear in person before a union bench as an accused, or before a union bench or union court as a witness.

**Appear-
ance of
women.**

²98A. (1) Every subdivisional magistrate may, as regards the union benches or union courts within his own jurisdiction, frame and publish lists of persons proved to his satisfaction by evidence of general repute or otherwise, to be touts, and may, from time to time, alter and amend such lists.

**Power to
frame and
publish
lists of
touts.**

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) Where the name of any person is included in a list framed and published under this section, such person may, within thirty days of the publication of the list in which his name first appears, apply in writing to the district magistrate for the removal of his name from such list; and the orders of the district magistrate, passed after such inquiry (if any) as he considers necessary, on such application shall be final.

³98B. A union bench or union court may report to the subdivisional magistrate the name of any person alleged or suspected to be a tout for inclusion in a list of touts referred to in sub-section (1) of section 98A, and the subdivisional magistrate may take such action on the report as he thinks fit.

**Report to
subdivi-
sional
magistrate
against
suspected
touts.**

⁴98C. A copy of a list of touts referred to in sub-section (1) of section 98A shall be kept hung up in every union bench and union court in the subdivision to which the same relates.

**Hanging
up of lists
of touts in
a union
bench or
union
court.**

⁵98D. Every person whose name is included in a list of touts referred to in sub-section (1) of section 98A, if found within the precincts of any union bench or union court without a written permission from the said bench or court, shall be deemed to be acting as a tout for the purposes of section 98F :

**Presump-
tion as to
touts.**

Provided that this section shall not apply where such person is a party to any case, suit or proceedings before such bench or court or has been directed to appear by any process of such bench or court.

¹Sub-section 2(a) was inserted by section 14 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

²Sections 98A, 98B, 98C, 98D, 98E and 98F were inserted by section 15, *ibid.*

[Ben. Act V]

(Part II.—Chapter VII.—Union benches and union courts.—
Sections 98E—100B.)

Complaint
to sub-
divisional
magistrate
against
touts
found
within
precincts
of a
union
bench or
union
court.

Penalty.

¹98E. Any union bench or union court may make a complaint in writing to the subdivisional magistrate regarding any person included in a list of touts referred to in sub-section (1) of section 98A who enters or is found within the precincts of such union bench or union court and the subdivisional magistrate may thereupon take such action as he thinks fit.

Realization
of fees,
fines, etc.

¹98F. Any person who acts as a tout whilst his name is included in a list of touts referred to in sub-section (1) of section 98A shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

99. All fees and fines imposed and all sums due on bonds and all sums decreed and compensation awarded under this Act by a union bench or union court may be realized under the orders of the union bench or union court, as the case may be, in the same manner as an arrear of rate imposed under section 37.

Registers
and
records.

100. Every union bench and union court shall maintain such registers and records and submit such returns as may be prescribed by rules under section 101.

Resignation
of a
member
of union
bench or
union
court.

²100A. A member of a union bench or union court may resign during his term of office by notifying in writing his intention to do so to the district magistrate and, on such resignation being accepted by the district magistrate, shall be deemed to have vacated his office,

Casual
vacancies.

³100B. When the place of a member of a union bench or union court becomes vacant by his resignation or otherwise a new member shall be appointed by the ⁴[State Government] in the manner provided by section 65 or section 73, as the case may be, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that the ⁵[State Government] may with regard to union boards generally or to any union board or class of union boards and subject to such conditions or restrictions as it may deem fit to impose, by notification, delegate to the commissioner the powers of appointment of the ⁶[State Government] under this section :

Provided also that no act of the union bench or union court shall be deemed to be invalid by reason only that the number of members of the union bench or union court at the time of the performance of such act was less than the prescribed number.

¹ See foot-note 2 on page 595, *ante*.

² Sections 100A to 100D were inserted by section 35 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

³ See foot-note 1 on page 556, *ante*.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Part III.—Chapter VIII.—Miscellaneous.—Sections 100C—101.)

¹100C. The ²[State Government] may with regard to union boards generally or to any union board or class of union boards and subject to such conditions or restrictions as it may deem fit to impose, by notification, delegate to the commissioner the power to reconstitute a union bench under section 65 or a union court under section 73.

Delegation
of powers
by the
State
Govern-
ment.

¹100D. (1) The commissioner may, subject to the approval of the ²[State Government] by an order in writing, at any time, for good and sufficient reason to be stated in such order, remove a member of a union bench or union court.

Removal
of a
member
of union
bench and
union
court,

(2) Before removing a member under sub-section (1) the commissioner shall allow the member concerned an opportunity of being heard.

PART III.

CHAPTER VIII.

MISCELLANEOUS.

101. (1) The ²[State Government] may, after previous publication, make rules to carry out the purposes of this Act.

Power of
State
Govern-
ment to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ²[State Government] may make rules—

(a) determining the manner and time of
election of members of union boards, the action to be taken under section 6, sub-section (4), in the case of the failure of an election, the registration of voters and candidates and the manner in which the votes shall be taken, and generally regulating all elections under this Act ;

³(aa) prescribing the period of twelve months referred to in sub-section(3)of section 7 ;

(b) fixing the time within which the elections of the president of a union board shall be held, and the time within which an election to fill a casual vacancy in such office shall be held ;

(c) regulating the powers of union boards to transfer property;

¹ See foot-note 2 on page 596, *ante*.

² See footnote 1 on page 556, *ante*.

³ The words "appointment or" were omitted by section 8 of the Bengal Village Self-Government (West Bengal Amendment) Act, 1947 (West Bengal Act X of 1947).

The words "and determining the authority who shall decide disputes relating to such elections" were omitted by section 36(a) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴ This new clause (aa) was inserted by section 18 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936) and is in force in areas in which the said section 18 is in force.

[Ben. Act V

(Part III.—Chapter VIII.—Miscellaneous.—Section 101.)

- (d) prescribing the powers to be exercised by the president or vice-president of a union board ;
 - (e) regulating the conduct of meetings of union boards and the method of forming a quorum ;
 - (f) prescribing the registers and records to be maintained and the returns to be submitted by union boards, union benches and union courts ;
 - (g) regulating the powers and duties of union boards in regard to the control to be exercised by them over dafadars and chaukidars within the union ;
 - (h) prescribing the duties of dafadars and chaukidars, and fixing the time and manner of the payment by the union board of the salaries of dafadars and chaukidars, and the cost of their equipment ;
 - (i) prescribing the process to be served by dafadars or chaukidars, and regulating the service of such processes ;
- | | |
|---|---|
| ¹ (j) regulating the powers and duties of union boards in regard to sanitation, conservancy, drainage, buildings, roads, bridges and water-supply under sections 26, 27, 28, 29, 30, 31 and 35, and in regard to schools and dispensaries, ⁴ [libraries and reading rooms] under section 32 ; | ² (j) regulating the powers and duties of union boards in regard to sanitation, conservancy, drainage, buildings, roads, bridges and water-supply under sections 26, 27, 28, 29, 30, 31 and 35, and in regard to * * * * * dispensaries, ⁴ [libraries and reading rooms] under section 32 ; |
|---|---|
- ⁵(jj) regulating the manner of constituting a joint committee under section 32AA, the proceedings of such joint committee, the conduct of its correspondence and the method of keeping its accounts ;
 - ⁶(jj1) prescribing the pay and qualifications of staff required for the furtherance of public health under section 26 ;
 - ⁶(jj2) regulating the powers of the union board to grant rewards under section 26B ;

¹This clause (j) is in force in this form in areas in which the Bengal (Rural Primary Education Act, 1930 (Ben. Act VII of 1930) is not in force.

²This clause (j) is in force in this form in areas in which the said Ben. Act VII of 1930 is in force.

³The words "schools and" in clause (j) were omitted by section 67 of, and the schedule to the said Ben. Act VII of 1930.

⁴These words were inserted by section 5 of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

⁵Clause (jj) was inserted by section 6 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

⁶Clauses (jj1) and (jj2) were inserted by section 36(b) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part III.—Chapter VIII.—Miscellaneous.—Section 101.)

- (k) for the making of an assessment by the union board under section 39, for imposing the rate under section 37, and prescribing under section 41 the method and time of payment of such rate ;
- (l) for the conduct of the distraint and sale of movable property of defaulters under section 42 ;
- (m) prescribing the method in which the accounts of the union fund shall be kept and audited ;
- (n) regulating the realization and disbursement, under section 54, of the amount required to meet the arrears therein specified ;
- (o) prescribing the manner in which orders under section 56 shall be published ;
- (p) prescribing the particulars of petitions under sections 67 and 77 which shall be entered in the registers of union benches and union courts ;
- (q) regulating the procedure to be followed by a union bench or a union court in the institution, trial and disposal of criminal cases and civil suits, and prescribing the method of forming a quorum ;
- ¹(qq) regulating the procedure for the transfer of criminal cases from union benches and of civil suits from union courts and for the retrial of civil suits under the proviso to section 88 ;
- (r) regulating the issue, service or execution of summonses and other processes by union benches or union courts, and the issue and service of notices by union boards ;
- (s) determining the procedure for the execution of decrees, orders and sentences of union courts and union benches ;
- (t) regulating the transfer by union benches or union courts of summonses and other processes to ordinary courts for their service or execution by such courts ; and
- (u) prescribing the fees to be levied by union benches and union courts for copies of documents, and determining the procedure to be followed in furnishing such copies.

(3) The rules made under sub-section (2) shall be published in such manner as the ²[State Government] may direct.

¹Clause (qq) was inserted by sec. 36(c) of the Bengal Village Self-Government (Amendment) Act, 1955 (Ben. Act VIII of 1955).

²See foot-note 1 on page 556, *ante*.

[Ben. Act V

(Part III.—Chapter VIII.—Miscellaneous.—Sections 101A—103.

—Schedule I.—Enactments repealed or amended.—Schedule II.

—Offences to be reported by a *chaukidar*.*

Power of
union
board to
make by-
laws.

¹101A. (1) A union board, empowered in this behalf by the commissioner on the recommendation of the district board, may make by-laws not inconsistent with those of the district board for carrying out the purposes specified in sub-clauses (b), (c) and (d) of clause (1) of section 26 and for the prevention of encroachments on village roads; and any such by-law may provide that breach of it shall be punishable with a fine not exceeding fifty rupees.

(2) By-laws made under this section shall have the force of law when confirmed by the commissioner and published in such manner and for such time as the commissioner may direct.

Members
of union
board, etc.,
not to bid
for or buy
property
sold.

102. No member of union board, union bench or union court, or other officer having any duty to perform in connection with any sale under this Act, shall directly or indirectly bid for or acquire any interest in any property sold at such sale.

Member-
ship not a
bar to trial
of cases.

103. A judge or a magistrate shall not be deemed to be a party to, or personally interested in, any case under this Act, within the meaning of section 556 of the Code of Criminal Procedure, 1898, merely because he is a member of the union board.

Act V of
1898.

SCHEDULE I.

ENACTMENTS REPEALED OR AMENDED.

[Not printed here. The repeals and amendments have been shown in the principal Acts.]

SCHEDULE II.

OFFENCES TO BE REPORTED BY A CHAUKIDAR.

(See section 23.)

Murder, culpable homicide, rape (when the offender is not the husband of the women raped), dacoity, robbery, theft, mischief by fire, house-breaking, counter-feiting currency notes, coins or stamps, possessing instruments or materials for the purposes of such counterfeiting, causing grievous hurt, riot, administering stupefying drugs, kidnapping, personating public servants, manufacturing, selling or possessing arms without a license and going armed without a license, and all attempts, preparations and conspiracies to commit, and abetments of, the said offences.

*Section 101A was inserted by section 7 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

of 1919.]

(Schedule III.—Powers and duties which may be delegated by the district magistrate.—Schedule IV.—Offences triable by a union bench.)

SCHEDULE III.

POWERS AND DUTIES WHICH MAY BE DELEGATED BY THE DISTRICT MAGISTRATE.

(See section 47.)

Powers and duties.	To whom may be delegated.
1	2
1. ¹ [Appointment and] dismissal of dafadars and chaukidars under section 20.	Subdivisional magistrate, superintendent of police or circle officer.
2. Fining of dafadars and chaukidars under section 22.	Ditto.
3. Requiring chaukidar to supply local information under section 23 (viii).	Subdivisional magistrate
4. Calling for assessment papers and passing of orders thereon, under section 40.	Ditto.
5. Issue of warrant under section 43 for distraint and sale of property of absentees for satisfaction of union rate.	Ditto.

SCHEDULE IV.

OFFENCES TRIABLE BY A UNION BENCH.

(See sections 65 and 66.)

PART A.

- I of 1871. 1. Offences under sections 24, 26 and 27 of the Cattle-trespass Act, 1871.

¹These words "Appointment and" are necessary in view of the adaptation made in section 20(1) by the Government of India (Adaptation of Indian Laws) Order. 1937,

[Ben. Act V of 1919.]

(Schedule IV.—Offences triable by a union bench.)

2. Offences under enactments ¹[(other than the Indian Penal Code and this Act)] or any rules or by-laws made thereunder which are punishable with fine only up to a limit of twenty-five rupees.

Act XLV
of 1860.

3. Offences under section 34 of the Police Act, 1861.

V of 1861.

4. Offences under the Bengal Ferries Act, 1885, except those under sections 28 and 30.

Ben. Act
I of 1885.

5. Offences under the following sections of the Indian Penal Code, namely :—sections 160, 178, 179, 269, 277, 289, 290, 294, 323, 334, 341, 352, 358, 426, 447, 448, 504 and 510 ; and when the value of the property in the opinion of the union bench is not over twenty rupees, sections 379 and 411.

PART B.

Offences under the following sections of the Indian Penal Code, namely :—sections 283, 428, 430, 506 509 ; and when the value of the property in the opinion of the magistrate is not over twenty rupees, section 403.

¹These brackets and words within square brackets in item 2 were substituted for the brackets and words “(other than the Indian Penal Code)” by section 37 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

Bengal Act VI of 1919
THE BENGAL FOOD ADULTERATION ACT, 1919.

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Bengal Act VI of 1919

(The Bengal Food Adulteration Act 1919.)¹

AMENDED

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REPEALED

Ben. Act III of 1923.

REPEALED IN PART AND
AMENDED

Ben. Act. V of 1930.

The Government of India
(Adaptation of Indian Laws)
Order, 1937.

ADAPTED

The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws Order,
1950.

(30th July, 1919.)

An Act to make provision for the prevention of adulteration of food in Bengal.

WHEREAS it is expedient to make provisions for the prevention of adulteration of food in Bengal ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Food Adulteration Act, 1919,

Short
title
and local
extent.

(2) This section shall extend to the whole of ²[West Bengal] except Calcutta- as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899³ ; and the ⁴[State Government] may, after previous publication, by notification in the ⁵[*Official Gazette*], extend all or any of the other sections of this Act to any local area outside Calcutta in ²[West Bengal.]

Ben. Act
III of
1899.

¹For Statement of Objects and Reasons, see the *Calcutt Gazette* of 1918, Pt. IV, page 179, and for proceedings in Council, see *ibid*, Pt. IVA, pages. 1027-1030, and see the *Calcutta Gazette* of 1919, Pt. IVA, pages 146-148, 518-520 and 983-994. This Act is to be deemed as repealed in the area added to Calcutta by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), sec. 2(2)(b). For the Sale of Food and Drugs and for Milk Supply in Calcutta, see the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), Chapters XXVIII and XXIX.

²These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1943.

³Bengal Act III of 1899 was repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) which Act has again been repealed and reenacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), and this reference should now be construed as a reference to clause (11) of sec. 5 of the last mentioned Act.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "*Calcutta Gazette*", by paragraph 4(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act-VI.]

(Chapter I.—Preliminary.—Sections 2, 3.)

(3) The¹[State Government] in extending all or any of the sections of this Act, as provided in sub-section (2), may extend the same in respect of all articles of food or may limit the operation of the section or sections extended to any specified article of food.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) an article of food shall be deemed to be “adulterated” if it has been mixed or packed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance or nature ;
- (2) “food” includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food ; and also includes flavouring matters and condiments ;
- (3) “local area” means any area, urban or rural, declared by the ¹[State Government] by notification in the ²[Official Gazette] to be a local area for the purposes of this Act ;
- (4) “local authority” means—
 - (i) in the case of any Municipality, the Municipal Commissioners ;
 - (ii) in the case of a Cantonment, the Cantonment Authority ; and
 - (iii) in the case of any other local area, such authority or officer as the ¹[State Government] may appoint in this behalf ;
- (5) “Public analyst” means any person appointed by the ¹[State Government], or by a local authority with the approval of the ¹[State Government], to perform the duties and to exercise the powers of a public analyst prescribed by this Act.

Power of
State
Govern-
ment or
local
authority
to appoint
public
analyst.

3. The ¹[State Government], or a local authority with the approval of the ¹[State Government], may appoint a person to be the public analyst for any area under their control, and such appointment shall be notified in the ²[Official Gazette].

¹See foot-note 4 on page 605, *ante*.

²See foot-note 5 on page 605, *ante*.

of 1919.]

(Chapter I.—Preliminary.—Chapter II.—General Provisions.—Sections 4, 5.)

4. The ¹[State Government] may declare the normal constituents of any article of food and may determine, by rules in this behalf, what deficiency in any of these constituents, or what addition of extraneous matters or proportion of water in a sample of any article of food, shall, for the purposes of this Act, raise a presumption until the contrary is proved that the article of food is not genuine or is injurious to health ; and a public analyst shall have regard to such rules in certifying the result of any analysis under this Act.

Power of State Government to declare normal constituents of any article of food.

CHAPTER II.

GENERAL PROVISIONS.

Sale of food.

5. (1) No person shall, directly or indirectly, himself or by any other person on his behalf, sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchasers ; and no person shall, directly or indirectly, himself or by any other person on his behalf, manufacture for sale any article of food which is not of the nature, substance or quality which it purports or is represented to be :

Prohibition of sale, etc., of food not of the proper nature, substance or quality.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say :—

- (a) where any matter or ingredient not injurious to health has been added to any article of food because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the article or to conceal the inferior quality thereof ; or
- (b) where any article of food is unavoidably mixed with some extraneous matter in the process of collection or preparation ; or
- (c) where a patent has been granted under any law for the time being in force in respect of any article of food, and the article is sold in the state required by the specification of the patent.

(2) In any prosecution under this section it shall be no defence to allege that the vendor or manufacturer was ignorant of the nature, substance or quality of the article sold, exposed for sale or manufactured for sale by him.

(3) In any prosecution under this section, the Court shall, unless and until the contrary is proved, presume that any article of food found in the possession of a person who is in the habit of manufacturing like articles for sale has been manufactured for sale by such person.

¹ See foot-note 4 on page 605 ante.

[Ben. Act VI

(Chapter II.—General Provisions.—Section 6.)

Prohibition
of sale,
etc., of
articles
of food
which
are not
of the
prescribed
standard
of purity.

6. (1) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale, any of the following articles, namely :—

- (a) milk 1*
- (b) butter,
- (c) ghee,
- (d) wheat flour,
- (e) mustard oil, and
- (f) any other article of food which may be notified by the ²[State Government] in this behalf,

unless the following conditions are fulfilled, namely :—

(i) in the case of milk (other than condensed, sterilized or desiccated milk in hermetically closed receptacles), the animal from which the milk is derived shall be definitely stated in such manner as the local authority may, by general or special order, require, and the article sold, exposed for sale or stored for sale, as the case may be, shall be the natural secretion from the udder of such animal, from which no ingredient has been extracted and to which no water or other substance (including any preservative) has been added, and shall not contain a less proportion of non-fatty solids and of fat than such as the ²[State Government] may prescribe ;

²(ia) in the case of condensed, sterilized or desiccated milk in hermetically closed receptacles, each such receptacle shall be labelled and marked in such manner as the ²[State Government] may prescribe and the article sold, exposed for sale or stored for sale, as the case may be, shall not contain a less proportion of non-fatty solids and of fat than such as the ²[State Government] may prescribe ;

(ii) in the case of butter, it shall be exclusively derived from milk or cream (other than condensed, sterilized or desiccated milk, or cream), or both with or without salt, or other preservative, and with or without the addition of colouring matter, such preservative or colouring matter being of such a nature and in such quantity as not to render the article injurious to health, and shall not contain a greater proportion of water than may be prescribed by the ²[State Government] in this behalf ;

¹The words and brackets "(other than condensed, sterilized or desiccated milk, in hermetically closed receptacles)" were omitted by sec. 2(1)(a) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²See foot-note 4 on page 605, *ante*.

³Clause (ia) was inserted by sec. 2(1)(b) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

of 1919.]

(Chapter II.—General Provisions.—Section 6.)

- (iii) in the case of ghee, it shall contain only substances, other than curds, which are derived exclusively from the milk of cows or of buffaloes, and shall fulfil such conditions as may be prescribed by the ¹[State Government];
- (iv) in the case of wheat flour, it shall not contain any substance which is not derived exclusively from wheat;
- (v) in the case of mustard oil, it shall be derived exclusively from mustard seed; and
- (vi) in the case of any food notified by the ¹[State Government] under clause (f), it shall fulfil such conditions as may be prescribed by the ¹[State Government] in regard to such food.

(2) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale, or manufacture or store for sale anything which is similar to any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or to any article notified by the ¹[State Government] under clause (f) of that sub-section, under a name which in any way resembles the name of such article.

²(2a) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale any food in the preparation of which any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or any article notified by the ¹[State Government] under clause (f) of that sub-section has been used unless such article fulfils the conditions set forth in that sub-section.

(3) In any prosecution under this section it shall be no defence to allege that the vendor, manufacturer or storer was ignorant of the nature, substance or quality of the article sold, exposed for sale, or manufactured or stored for sale by him ³[or of any article used in the preparation of any food sold, exposed for sale, or manufactured or stored for sale by him.]

(4) In any prosecution under this section the Court shall, unless and until the contrary is proved, presume that any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or any article notified by the ¹[State Government] under clause (f) of that sub-section ⁴[or the food referred to in sub-section (2a)] found in the possession of a person who is in the habit of manufacturing or storing like articles for sale has been manufactured or stored for sale by such person.

¹See foot-note 4 on page 605, *ante*.

²Sub-section (2a) was inserted by sec. 2(2) of the Bengal Food Adulteration (Amendment) Act, 1980 (Ben. Act V of 1980).

³These words were inserted by sec. 2(3), *ibid*.

⁴These words, brackets, figure and letter were inserted by sec. 2(4), *ibid*.

(Chapter II.—General Provisions.—Sections 7—10.)

Prohibition of adulterants in places where ghee, wheat, flour, etc., are manufactured.

7. (1) No person shall keep or permit to be kept in any manufactory, shop or place, in which butter, ghee, wheat flour, mustard oil or any article notified by the ¹[State Government] under clause (f) of sub-section (1) of section 6 is manufactured, any substance intended to be used for the adulteration of such butter, ghee, wheat flour, mustard oil or other article.

(2) If any article capable of being so used is found in such manufactory, shop or place, the Court shall, unless and until the contrary is proved, presume in any prosecution under this section that it is intended to be used for the purposes of adulteration.

8. [Receptacles for separated or skimmed condensed milk to be marked].—Rep. by sec. 3 of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act. V of 1930).

Analysis of food.

Power of purchaser to have article of food analysed.

9. Any purchaser of an article of food shall be entitled, on payment of such fee as the ¹[State Government] may prescribe, to have such article analysed by the public analyst appointed for the area within which such article is purchased and to receive from him a certificate, in the form prescribed in the schedule to this Act, of the result of his analysis.

Compulsory sale of food, etc., for purpose of analysis.

10. (1) Any person duly authorised by the ¹[State Government] or by any local authority empowered by the ¹[State Government] in this behalf, may require, on tendering the price for it, the sale to him during the process of manufacture, for the purpose of analysis, of such quantity of—

(i) any food, or

(ii) any ingredients used in the manufacture of food,

as is reasonably requisite for division and disposal under section 11; and any person in possession of the said food or ingredients shall be bound to sell such quantity.

(2) Any person duly authorised by the ¹[State Government] or by any local authority empowered by the ¹[State Government] in this behalf, may also require the surrender to himself, for the purpose of analysis, of such quantity as is reasonably requisite for division and disposal under section 11, of any food which for the purpose of sale is—

(a) in course of transit in any local area, or

(b) stored in any place in the said local area;

and any person in possession of the said food shall be bound to surrender such quantity:

Provided that in every such case the price of the food so surrendered shall be payable from such fund as the ¹[State Government] may prescribe to the owner of the food, if claimed by such owner within one month from the date of the said surrender.

¹See foot-note 4 on page 605, ante.

of 1919.]

(Chapter II.—General Provisions.—Sections 11, 12.)

(3) Any person duly authorised by the ¹[State Government] or by any local authority empowered by the ¹[State Government] in this behalf, may also require, by tender of the price, the sale to him, for the purpose of analysis, of such quantity of any food exposed or intended for sale, as is reasonably requisite for division or disposal under section 11 ; and any person in possession of or exposing the same for sale shall be bound to sell such quantity.

11. (1) Any purchaser who wishes to have an article of food analysed under section 9, and any person who purchases for the purpose of analysis, a sample of food under section 10, sub-section (1) or sub-section (3), shall, after the purchase has been completed, forthwith notify to the seller, or his agent selling the article, his intention to have the same analysed, and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in any manner which its nature will permit.

Procedure
for
analysis
of food.

(2) The person purchasing the article or sample shall deliver one of the said parts to the seller or his agent, and shall retain another part for future comparison, and shall send the remaining part to the public analyst appointed for the area where the article is sold.

(3) When any food is surrendered under section 10, sub-section (2), the person to whom it is surrendered shall forthwith notify to the person in charge of the said food his intention to have the same analysed, and shall thereupon deal with the food so surrendered in the manner provided in sub-sections (1) and (2).

Inspection and seizure of food.

12. (1) Any person duly authorised in this behalf by rule made under this Act may, at any time by day or by night, inspect and examine any food which is being manufactured for sale, or is in course of transit or stored for sale, or is hawked about or exposed for sale, and any utensil or vessel used for preparing, manufacturing or containing any such food ; and no person shall offer resistance to, or obstruct, any such inspection or examination.

Power to
seize
food
which is
believed
to be
adulterated.

(2) If the person so authorised has reason to believe any such food to be adulterated, he may seize and remove such food, utensil or vessel in order that the same may be dealt with in accordance with the provisions of section 13 ; and no person shall offer resistance to, or obstruct, any such seizure or removal.

(3) The person authorised as aforesaid may, instead of carrying away any food, utensil or vessel seized under sub-section (2), leave the same in such safe custody as he thinks fit in order that the same may be dealt with as provided in section 13 ; and no person shall remove such food, utensil or vessel from such custody or interfere or tamper with the same in any way while so detained.

¹See foot-note 2 on page 605, ante.

(Chapter II.—General Provisions.—Sections 13, 14.)

(4) When any food is seized under sub-section (2), the person seizing it shall separate therefrom such quantity as is reasonably requisite for division and disposal for the purposes of this sub-section, and shall thereupon divide and dispose of such quantity in the manner provided in section 11, sub-sections (1) and (2).

Food,
etc.,
seized
under
section
12 to
be taken
before
Magistrate.

13. (1) Any food, utensil or vessel seized under section 12, sub-section (2), shall, subject to the provisions of sub-sections (3) and (4) of that section, be taken as soon as may be after such seizure, before a Magistrate.

(2) If it appears to the Magistrate that any such food is adulterated, or that any such utensil or vessel is used for preparing, manufacturing or containing the same, he shall cause the food, utensil or vessel to be forfeited to the local authority for the area in which the seizure has taken place, in order that it may be destroyed or otherwise disposed of by that authority, at the cost of the person in whose possession it was at the time of its seizure, and such cost shall be realised as if it were a fine imposed under this Act.

(3) If it appears to the Magistrate that any such food is not adulterated, or that any such utensil or vessel is not used for preparing, manufacturing or containing the same, the person from whose shop or place the food, utensil or vessel was taken shall be entitled to have it restored to him, and it shall be in the discretion of the Magistrate to award to such person from such fund as the ¹[State Government] may prescribe in this behalf, such compensation, not exceeding the actual loss which he has sustained, as the Magistrate may think proper.

Miscellaneous.

Duty of
public
analyst
to supply
certificate
of
analysis.

14. (1) Every public analyst to whom any article of food has been submitted for analysis under this Act, shall deliver to the person so submitting it a certificate in the form prescribed in the schedule to this Act, specifying the result of his analysis, and shall send a copy of the same to the local authority concerned.

(2) Any document purporting to be such certificate signed by a public analyst shall be sufficient evidence in any inquiry, trial or proceeding under this Act of the result of such analysis :

Provided that any Court before which a case may be pending under this Act, whether exercising original, appellate or revisional jurisdiction, may, of its own motion, or at the request either of the accused or the complainant, cause any article of food to be sent for analysis to the Sanitary Commissioner for ²[West Bengal], or any other officer whom the ¹[State Government] may appoint in this behalf, who shall thereupon analyse the same and report the result of such analysis to the said Court, and the said report shall be admissible in evidence in such Court. The expense of such analysis shall be paid by the accused or the complainant as the Court may, by order, direct.

See foot-note 4 on page 605, ante

See foot-note 2 on page 605, ante

of 1919.]

(Chapter II.—General Provisions.—Sections 15—20.)

15. No prosecution for any offence under this Act shall be instituted without the order or consent in writing of the local authority within whose jurisdiction the offence is committed :

Cogni-
sance of
offences.

¹Provided that in the case of an offence committed within a municipality such order or consent shall be valid if made or given by the Chairman of the Commissioners of the Municipality.

16. No Magistrate whose powers are less than those of a Magistrate of the second class shall try any offence under this Act.

Juris-
diction.

17. No summons shall issue for the attendance of any person accused of an offence under this Act unless the same is applied for within thirty days from the date upon which the order of consent referred to in section 15 shall have been made or given.

Limitation
for prose-
cutions.

18. [*Fines, etc., how to be credited.*—Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

Act XLV
of 1860.

19. Every person authorised under section 12 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain
persons
to be
deemed
public
servants.

20. (1) The ²[State Government] may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

Power of
State
Govern-
ment to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ²[State Government] may make rules—

(a) determining what deficiencies in or additions to any article of food, the normal constituents of which have been declared under section 4, shall raise the presumption that such article is not genuine or is injurious to health ;

(b) prescribing the proportion of non-fatty solids and of fat which must be contained in milk sold, exposed for sale or stored for sale ;

¹This proviso was added by sec. 2 of the Bengal Food Adulteration (Amendment) Act, 1925 (Ben. Act V of 1925).

²See foot-note 4 on page 605, ante.

[Ben. Act VI

(Chapter III.—Penalties.—Section 21.)

- ¹(bb) specifying the manner in which each receptacle containing condensed, sterilized or desiccated milk sold, exposed for sale; or stored for sale, is to be labelled and marked, including the size of the lettering, the description of the contained article, its composition and direction for use ;
- (c) prescribing the maximum proportion of water which may be contained in butter sold, exposed for sale or stored for sale ;
- (d) prescribing the conditions to be fulfilled by any food notified by the ²[State Government] under clause (f) of sub-section (1) of section 6 ;
- (e) providing for the appointment by the ³[State Government] or by any local authority empowered by the ⁴[State Government] in this behalf, of persons to perform the duties and to exercise the powers mentioned in section 10, or section 12 ;
- (f) prescribing the fees to be charged by a public analyst for analysing articles of food under this Act ; and

* * * * *

CHAPTER III.

PENALTIES.

Penalties.

21. Whoever contravenes any of the provisions of this Act mentioned in the first column of the following table shall be punished, for a first offence, with fine to the extent mentioned in that behalf in the third column of the said table, and, for a second or subsequent offence, with fine or imprisonment, or with both, to the extent mentioned in the fourth column thereof.

Explanation.—The entries in the second column of the following table, headed "Subject", are not intended as definitions of the

¹Clause (bb) was inserted by sec. 4 of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²See foot note 4 on page 605, ante.

³Clause (g) was omitted by para. 2 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1919.]

(Chapter III.—Penalties.—Section—21.)

offences described in the provisions mentioned in the first column, or even as abstracts of those provisions ; but are inserted merely as references to the subject thereof :—

1	2	3	4
Provisions of the Act.	Subject.	Maximum fine which may be imposed for a first offence.	Maximum fine or imprisonment, or both, which may be imposed for a second or subsequent offence.
Section 5, sub-section (1).	Sale, etc., of adulterated food.	Two hundred rupees.	One thousand rupees, or imprisonment for three months, or both.
Section 6, sub-section (1).	Sale, etc., of milk, butter, ghee, wheat flour, mustard oil or notified article which is not of the prescribed quality ¹ [or is not labelled or marked in the prescribed manner].	Ditto ..	Ditto.
Section 6, sub-section (2).	Sale, etc., of articles similar to milk, butter, ghee, etc.	One hundred rupees.	Five hundred rupees, or imprisonment for three months or both.
² [Section 6, sub-section (2a).	Sale, etc., of food containing any article which is not of the prescribed quality.	Two hundred rupees.	One thousand rupees, or imprisonment for three months, or both.]

¹These words were inserted by sec. 5(1) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V. of 1930).

²This entry was inserted by sec. 5(2), *ibid.*

(Chapter III.—Penalties.—Section 21.)

1	2	3	4
Provisions of the Act.	Subject.	Maximum fine which may be imposed for a first offence.	Maximum fine or imprisonment, or both, which may be imposed for a second or subsequent offence.
Section 7, sub-section (1).	Keeping or permitting to be kept substance intended to be used for adulteration of butter, ghee, wheat flour, mustard oil, etc.	One hundred rupees.	Five hundred rupees.
Section 10 sub-sections (1), (2) and (3).	Refusal to sell or surrender articles of food required for purposes of analysis.	Two hundred rupees.	.....
Section 12, sub-sections (1) and (2).	Offering resistance or obstruction to any authorised person inspecting or examining food or seizing or removing food believed to be adulterated.	Ditto	.....
Section 13, sub-section (3).	Removing, interfering or tampering with food, etc., seized and left in custody.	Ditto	.....

¹The entry relating to section 8 was omitted by sec. 5(3) of the Bengal Food Adulteration (Amendment) Act, 1980 (Ben. Act V of 1980).

of 1919.]

(*The Schedule.*)

THE SCHEDULE.

FORM OF CERTIFICATE.

(*See sections 9 and 14.*)

To¹

I, the undersigned, public analyst for the
do hereby certify that I received on the
day of 19 , from² a
sample of for analysis (which then
weighed³) and have analysed the same
and declared the result of my analysis to be as follows :—

I am of opinion that the same is a sample of

⁴*Observations.*

Signed this day of 19 .

A. B.

at

¹Here insert the name of the person submitting the article for analysis.

²Here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly.

³When the articles cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

⁴Here the analyst may insert at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether it was in excess of what is ordinary or otherwise.

NOTE.—In the case of a certificate regarding milk, butter or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

